

IDAHO CODE

2013 CUMULATIVE SUPPLEMENT

TITLE 67

MICHIE

2013 CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

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COMMISSIONERS

TITLE 67

MICHIE

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5036130

ISBN 978-0-672-83888-0 (Set)
ISBN 978-1-4224-3278-5

PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports

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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

**ADJOURNMENT DATES OF SESSIONS OF
LEGISLATURE**

Year	Adjournment Date
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

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TITLE 67

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CHAPTER 2

LEGISLATIVE DISTRICTS

SECTION.

- 67-201. Legislative apportionment. [Repealed.]
- 67-202. Legislative districts — Senators

elected — Representatives
elected. [Repealed.]

67-201. Legislative apportionment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised Compiled and reen. C.L. 4:1; C.S., § 51; I.C.A., § 65-201, was repealed by S.L. 2009, ch. 52, § 1.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-202. Legislative districts — Senators elected — Representatives elected. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-202, as added by, 1992, ch. 13, § 2, p. 32; am. 1992, ch. 150, § 1, p. 451; am. 1994, ch. 397, § 1, p. 1255, was repealed by S.L. 2009, ch. 52, § 1.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

CHAPTER 4

LEGISLATURE

SECTION.

- 67-401. Constitution of legislature.
- 67-404a. Organization of house of representatives and senate.
- 67-406. Compensation and mileage of members of legislature.
- 67-406c. Secretarial and other assistance. [Repealed.]
- 67-412. Allowance for members. [Repealed.]
- 67-428. Officers of council — Committees — Director of legislative services.
- 67-429. Powers and duties.
- 67-429D. Audit of legislative department.
- 67-431. Compensation and expenses.

SECTION.

- 67-434. Per diem allowance and expenses. [Repealed.]
- 67-435. Powers and duties.
- 67-436. Vouchers for expenses. [Repealed.]
- 67-450B. Independent financial audits of local governmental entities — Filing requirements.
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SECTION.

67-451. Legislative account created — Duties of controller — Disbursements from account — Report of disbursements.

67-451A. Legislative legal defense fund created.

SECTION.

67-453. Statements regarding proposed constitutional amendments.

67-460. Powers of committee.

67-401. Constitution of legislature. — The legislature consists of a senate and house of representatives, the members of which are elected from the respective senatorial and representative districts by the qualified electors of said districts.

History.

Based upon Const., art. 3, §§ 1, 2, and R.S., § 115; compiled and reen. R.C., § 33; reen.

C.L., § 33; C.S., § 75; I.C.A., § 65-401; am. 2009, ch. 52, § 3, p. 136.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 52, deleted “as defined by chapter 2 of this title” following “representative districts.”

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-404. Sessions of legislature.**RESEARCH REFERENCES**

A.L.R. — Constitutionality of legislative prayer practices. 30 A.L.R.6th 459.

67-404a. Organization of house of representatives and senate. —

On the first Thursday of December in general election years, the members of the house of representatives and senate shall meet in Boise, in the capitol building or, during any renovation of the capitol building, in the building in which the legislature will hold sessions, for the purpose of organizing their respective houses. Members shall each receive compensation and expenses authorized by the citizen's committee on legislative compensation, which shall be paid from the legislative account.

History.

1967, ch. 176, § 1, p. 588; am. 2007, ch. 41, § 1, p. 101.

Cross Reference. Citizens' committee on legislative compensation, Idaho Const., art. 3, § 23.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 41, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 4 of S.L. 2007, ch. 41 declared an emergency. Approved March 2, 2007.

67-406. Compensation and mileage of members of legislature. —

Each member of the legislature shall receive for his services compensation and expenses in accordance with rates established by the citizens' committee on legislative compensation authorized in section 67-406b, Idaho Code.

History.

1921, ch. 4, § 1, p. 6; § 65-406; am. 1947, ch. 2, § 1, p. 4; am. 2009, ch. 52, § 4, p. 136.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 52, rewrote the section, deleting archaic language and providing correct terminology.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-406c. Secretarial and other assistance. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 303, § 3, p. 861; am. 1976, ch. 286, § 3, p. 987, was repealed by S.L. 2009, ch. 52, § 1.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-412. Allowance for members. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1951, ch. 94, § 1, p. 184; am. 1957, ch. 135, § 1, p. 228; am. 1965, ch. 5, § 1, p. 7; am. 1969, ch. 56, § 2, p. 194; Init. Measure 1970, No. 1; am. 1971, ch. 89, § 1, p. 191; am. 1973, ch. 298, § 1, p. 628; am. 1975, ch. 183, § 1, p. 500; am. 1976, ch.

110, § 1, p. 436; am. 2003, ch. 32, § 35, p. 115, was repealed by S.L. 2009, ch. 52, § 1.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-428. Officers of council — Committees — Director of legislative services. — The council shall select a chairman and a vice-chairman, one of whom shall be a senator and the other a representative and it shall adopt its own rules of procedure. The council shall appoint such committees as may be necessary for the proper and efficient performance of its duties. Committees shall consist of members of the council and other members of the legislature. The council shall appoint a director of legislative services, who shall serve at the pleasure of the council, and the council may employ such other employees and engage the services of such persons and agencies as may be necessary or desirable in the performance of its duties.

History.

1963, ch. 57, § 2, p. 222; am. 1967, ch. 365,

§ 2, p. 1054; am. 1996, ch. 159, § 1, p. 502; am. 2009, ch. 52, § 5, p. 136.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 52, deleted the former last sentence, which read: "The director of legislative services and other employees shall serve at the pleasure of the council and each shall be paid a salary to be fixed by council"; and in the present last sentence,

inserted "who shall serve at the pleasure of the council."

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-429. Powers and duties. — (1) It shall be the duty of the council to collect and compile information, to draft bills and to conduct research upon any subject which the legislature may authorize or direct or upon any subject which it may determine, provided that all activities of the council must be reasonably related to a legislative purpose. The legislature may make specific assignments to the council by a concurrent resolution approved by both houses.

(2) The council may hold public hearings and it may authorize or direct any of its committees to hold public hearings on any matters within the jurisdiction of the council.

(3) For the purpose of conducting any study within the jurisdiction of the council, by resolution adopted by the affirmative vote of two-thirds (2/3) of the entire membership of the council, the chairman of the council may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence or other documents or records which the council deems relevant or material to any matter on which the council or any committee is conducting a study.

(4) It shall be the duty of the council to superintend and administer the legislative space in the capitol building at all times, and to prepare such space when required for the sessions of the legislature, which shall include the provision of furniture and equipment.

(5) The legislative council shall review and make recommendations to the administrator of the division of human resources on all aspects of the state personnel system, including policies, wages and salaries.

(6) The council shall release audit reports prepared by the legislative audits division of the legislative services office as provided in section 67-435, Idaho Code.

History.

1963, ch. 57, § 3, p. 222; am. 1967, ch. 365, § 3, p. 1054; am. 1977, ch. 306, § 1, p. 855; am. 1986, ch. 134, § 8, p. 355; am. 1993, ch.

327, § 2, p. 1186; am. 1994, ch. 180, § 167, p. 420; am. 1994, ch. 181, § 4, p. 575; am. 1999, ch. 370, § 18, p. 976; am. 2009, ch. 52, § 6, p. 136.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, deleted subsection (3), which read: "The council shall establish and maintain a legislative reference library" and redesignated the subsequent subsections accordingly; added subsection (6); and deleted subsections (7) through (13), deal-

ing with powers and duties of the legislative council.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-429A. State-tribal gaming compacts.

RESEARCH REFERENCES

A.L.R. — Preemption of state law by Indian Gaming Regulatory Act. 27 A.L.R. Fed. 2d 93.

67-429B. Authorized tribal video gaming machines.**JUDICIAL DECISIONS****ANALYSIS**

Constitutionality.

Gaming compact.

Constitutionality.

This section and § 67-429C are constitutional; the decision in *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), regarding whether video gaming machines were permitted on an Indian reservation, was final, and res judicata in any further litigation as to whether tribal video gaming is permissible. *Knox v. State Ex Rel. Otter*, 148 Idaho 324, 223 P.3d 266 (2009).

Gaming Compact.

This section authorizes Indian tribes to

conduct gaming using tribal video gaming machines; § 67-429C authorizes tribes to amend their gaming compact to permit the use of tribal video gaming machines. Once a compact is amended, the number of gaming machines must be limited and the tribe must contribute 5% of the net gaming income to local educational programs and schools. *Knox v. United States DOL*, 759 F. Supp. 2d 1223 (D. Idaho 2010).

67-429C. Amendment of state-tribal gaming compacts.**JUDICIAL DECISIONS****ANALYSIS**

Applicability.

Constitutionality.

Effect of amendment.

Applicability.

In declaratory judgment action, district court properly ruled that Indian tribes could operate tribal video gaming machines without renegotiating their compact to limit the numbers of games and to require payments by the tribes to local education programs and schools. *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006).

Constitutionality.

Section 67-429B and this section are constitutional; the decision in *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), regarding whether video gaming machines were permitted on an Indian reservation, was

final, and res judicata in any further litigation as to whether tribal video gaming is permissible. *Knox v. State Ex Rel. Otter*, 148 Idaho 324, 223 P.3d 266 (2009).

Effect of Amendment.

Section 67-429B authorizes Indian tribes to conduct gaming using tribal video gaming machines; this section authorizes tribes to amend their gaming compact to permit the use of tribal video gaming machines. Once a compact is amended, the number of gaming machines must be limited and the tribe must contribute 5% of the net gaming income to local educational programs and schools. *Knox v. United States DOL*, 759 F. Supp. 2d 1223 (D. Idaho 2010).

67-429D. Audit of legislative department. — Beginning with the two (2) year period of fiscal years 2013 and 2014 and for each succeeding biennium, the council shall engage the services of a certified public accountant to audit the fiscal affairs of the legislative department. Expenditures for such audit shall be paid out of the legislative account.

History.

I.C., § 67-429D, as added by 2013, ch. 212, § 2, p. 501.

STATUTORY NOTES

Cross References.

Legislative account, § 67-451.

67-431. Compensation and expenses. — Members of the council and the committees thereof shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of their official duties in accordance with the rates established by the citizens' committee on legislative compensation as authorized in section 67-406b, Idaho Code.

History.

1963, ch. 57, § 5, p. 222; am. 1967, ch. 223, § 1, p. 674; am. 1967, ch. 365, § 5, p. 1054;

am. 1975, ch. 245, § 1, p. 657; am. 2009, ch. 52, § 7, p. 136.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, rewrote the section, deleting archaic language and providing a correct reference to legislative compensation.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-434. Per diem allowance and expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 354, § 3, p. 999, was repealed by S.L. 2009, ch. 52, § 1.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-435. Powers and duties. — (1) The joint finance-appropriations committee shall have the following powers and duties:

(a) To review the executive budget and the budget requests of each state department, agency and institution, including requests for construction of capital improvements, as well as other requests for appropriations submitted to the legislature.

(b) To conduct such hearings as it may deem necessary and proper.

(c) To submit a report to each session of the legislature covering its activities during the preceding period and setting forth its findings and recommendations and to make such recommendations to the appropriate legislative committees as it may deem proper concerning the budget and other proposed legislation.

(d) To perform such other duties as the legislature or legislative council may by appropriate resolution direct.

(2) The joint finance-appropriations committee shall use the following procedures for releasing reports produced by the legislative audits division:

(a) All reports produced by the legislative audits division shall be delivered to the cochair of the joint finance-appropriations committee for their review and approval prior to release;

(b) The cochair of the joint finance-appropriations committee may, at

their discretion, conduct hearings relating to any report and seek input and testimony prior to, or after reports are released; and

(c) After such review as deemed necessary and prudent by the cochair of the joint finance-appropriations committee, the cochair shall release the reports produced by the legislative audits division within sixty (60) days of submission to the cochair; except in the event that a report is returned to the legislative audits division for further audit or review, then the cochair shall approve the release of reports within sixty (60) days after the report is resubmitted to the cochair.

History.

1967, ch. 354, § 4, p. 999; am. 1969, ch. 418, § 1, p. 1158; am. 1970, ch. 150, § 1, p. 459; am. 1971, ch. 290, § 3, p. 1104; am. 1973, ch.

151, § 3, p. 292; am. 1993, ch. 327, § 40, p. 1186; am. 1994, ch. 180, § 168, p. 420; am. 2009, ch. 52, § 8, p. 136.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, deleted former subsection (4), which read: "To require copies of all audit reports issued by the legislative council employees or contractors, and to require access to all audit working papers and other records of the employees or contractors of the legislative council"; and added present

subsection (2) and made related redesignations.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-436. Vouchers for expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 354, § 5, p. 999; am. 1970, ch. 150, § 2, p. 459; am. 1973, ch. 151, § 4, p. 292; am. 1976, ch. 314, § 3, p. 1080, was repealed by S.L. 2009, ch. 52, § 1.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-450B. Independent financial audits of local governmental entities — Filing requirements. — (1) The requirements set forth in this section are minimum audit requirements for all local governmental entities, and include, without limitation, all cities, counties, authorities and districts organized as separate legal and reporting entities under Idaho law, and include the councils, commissions and boards as appointed or elected and charged with fiscal management responsibilities of the local governmental entity.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The entity's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The entity shall file one (1) copy of each completed audit report with the

legislative services office within nine (9) months after the end of the audit period.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of a local governmental entity whose annual expenditures (from all sources) exceed two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of a local governmental entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000) in the current year shall have an annual audit or may elect to have its financial statements audited on a biennial basis. The first year that expenditures exceed one hundred thousand dollars (\$100,000) is the first year of the biennial audit period. The local government entity may continue the biennial audit cycle in subsequent years as long as the entity's annual expenditures during the first year of the biennial audit period do not exceed two hundred fifty thousand dollars (\$250,000)[.] In the event that annual expenditures exceed two hundred fifty thousand dollars (\$250,000) in the current year following a year in which a biennial audit was completed, the local government entity shall complete an annual audit. In the event that annual expenditures in the current year do not exceed one hundred thousand dollars (\$100,000) following a year in which an annual or biennial audit was completed, the local government entity has no minimum audit requirement.

(c) The governing body of a local governmental entity whose annual expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

History.

I.C., § 67-450B, as added by 1993, ch. 387, § 1, p. 1417; am. 1996, ch. 47, § 1, p. 140; am.

2009, ch. 52, § 9, p. 136; am. 2011, ch. 21, § 1, p. 59.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, rewrote the last paragraph in subsection (1), which formerly read: "The entity shall file two (2) copies of each completed audit report with the legislative council within ten (10) days after receiving the audit from the contracting independent auditor"; deleted former subsection (2)(c), which dealt with the authority of a governing body of a local governmental entity to have financial statements reviewed, and made related redesignations; in subsections (2)(a) through (2)(c), substituted "expenditures" or similar language for "budget"; in

present subsection (2)(c), substituted "one hundred thousand dollars (\$100,000)" for "fifty thousand dollars (\$50,000)"; and, in subsection (2)(d), substituted "expenditure" for "receipt."

The 2011 amendment, by ch. 21, inserted "of local" in the section heading; and rewrote paragraph (2)(b), which formerly read: "The governing body of a local governmental entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a

biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity's annual expenditures do not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit."

Compiler's Notes.

The bracketed insertion at the end of the

third sentence in paragraph (2)(b) was added by the compiler to replace punctuation inadvertently deleted by the 2011 amendment.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-450C. Independent financial audits of affiliated organizations to state governmental agencies or entities — Filing requirements. —

(1) The requirements set forth in this section are minimum audit requirements for all affiliated organizations to state governmental entities, and include, without limitation, all state departments, commissions, institutions, colleges or universities, which are created pursuant to statute or the constitution and which receive an appropriation from the legislature.

As used in this section "affiliated organization" means an organization affiliated with an agency or entity of state government which meets all of the following criteria:

(a) The organization has separate legal standing, where neither direct association through appointment of a voting majority of the organization's body nor fiscal dependency exists.

(b) The affiliation with a specific primary state government agency or entity is set forth in the organization's articles of incorporation by reference to the name of the primary state government agency or entity in describing the purposes for which the organization was established.

(c) The affiliation with a specific primary state government agency or entity is set forth in the organization's application to the internal revenue service for exemption for payment of federal income tax pursuant to the internal revenue code by reference to the name of the primary government in response to any of the questions contained in the exemption application and the organization has been granted that exemption.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The affiliated organization's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The affiliated organization shall file one (1) copy of each completed audit report with the legislative services office within nine (9) months after the end of the audit period.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of an affiliated organization whose annual expenditures (from all sources) exceeds two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of an affiliated organization whose annual expen-

ditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the organization's annual expenditures do not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.

(c) The governing body of an affiliated organization whose annual expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

History.

I.C., § 67-450C, as added by 1997, ch. 209,
§ 1, p. 626; am. 2009, ch. 52, § 10, p. 136.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, rewrote the last paragraph in subsection (1), which formerly read: "The affiliated organization shall file two (2) copies of each completed audit report with the legislative council within ten (10) days after receiving the audit from the contracting independent auditor"; in subsections (2)(a) and (2)(b), substituted "expenditures" or similar language for "budget"; rewrote subsection (2)(c), dealing with requirements for financial statement review; deleted subsection (2)(d), which read: "The

governing body of an affiliated organization whose annual budget (from all sources) does not exceed fifty thousand dollars (\$50,000) has no minimum audit requirements under this section," and made related redesignations; and in subsection (2)(d), substituted "expenditure" for "receipt."

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-450D. Independent financial audits — Designated entities. —

(1) Notwithstanding any other provisions of the Idaho Code relating to audit requirements regarding the entities hereinafter designated, beginning on July 1, 2010, the requirements set forth in this section shall constitute the minimum audit requirements for the following entities:

- Alfalfa and clover seed commission;
- Idaho apple commission;
- Idaho aquaculture commission;
- Idaho barley commission;
- Idaho bean commission;
- Idaho beef council;
- Idaho cherry commission;
- Idaho dairy products commission;
- Idaho food quality assurance institute;
- Idaho forest products commission;
- Idaho grape growers and wine producers commission;
- Idaho honey advertising commission;
- Idaho hop grower's commission;

Idaho mint commission;
Idaho oilseed commission;
Idaho pea and lentil commission;
Commission on pesticide management;
Idaho potato commission;
Idaho rangeland resources commission;
Soil and water conservation commission;
Idaho wheat commission.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) Any entity whose annual expenditures (from all sources) exceed two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) Any entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000), in the current year shall have an annual audit or may elect to have its financial statements audited on a biennial basis. The first year that expenditures exceed one hundred thousand dollars (\$100,000) is the first year of the biennial audit period. The designated entity may continue the biennial audit cycle in subsequent years as long as the entity's annual expenditures during the first year of the biennial audit period do not exceed two hundred fifty thousand dollars (\$250,000). In the event that annual expenditures exceed two hundred fifty thousand dollars (\$250,000) in the current year following a year in which a biennial audit was completed, the designated entity shall complete an annual audit. In the event that annual expenditures in the current year do not exceed one hundred thousand dollars (\$100,000) following a year in which an annual or biennial audit was completed, the designated entity has no minimum audit requirement.

(c) Any entity whose annual expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under the provisions of this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

(3) All moneys received or expended by the entities identified in subsection (1) of this section shall be audited as specified in subsection (2) of this section by a certified public accountant designated by the entity, who shall furnish a copy of such audit to the director of the legislative services office and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the commission's fiscal year.

(4) Any entity identified in subsection (1) of this section that is not audited pursuant to the provisions of this section shall submit an unaudited annual statement of revenues, expenditures and fund balances to the director of the legislative services office, to the senate agricultural affairs committee and the house agricultural affairs committee, to the state controller and to the division of financial management.

(5) The right is reserved to the state of Idaho to audit the funds of the entities identified in this section at any time.

History.

I.C., § 67-450D, as added by 2010, ch. 178,
§ 1, p. 366; am. 2011, ch. 21, § 2, p. 59.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 21, substituted "Soil and water conservation commission" for "Soil conservation commission" in the list of commissions in subsection (1), and rewrote subsection (2)(b), which formerly read: "Any entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000), may elect to have its financial statements

audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity's annual expenditures do not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

67-451. Legislative account created — Duties of controller — Disbursements from account — Report of disbursements. —

(1) There is hereby created in the state treasury the legislative account. The legislative account shall consist of such moneys as are placed into it by other appropriations, by receipts paid into the legislative account, and the moneys appropriated and transferred into it according to the provisions of this act.

(2) There is hereby appropriated out of the general fund and transferred into the legislative account, and commencing January 1, 2008, the state controller is authorized and directed to make such transfers in the amounts shown on each of the following dates in each year:

January 1	\$1,825,000
March 1	\$1,825,000
June 1	\$1,445,000
September 1	\$1,660,000

(3) The president pro tempore of the senate and the speaker of the house of representatives are hereby authorized to make expenditures out of the legislative account for any necessary expenses of the legislature and the legislative account is hereby perpetually appropriated for any necessary expenses of the legislature. Necessary expenses of the legislature shall include, but are not necessarily limited to, salaries and wages of officers, members, and employees of the legislature, consultants and other expert or professional personnel, travel expenses of officers, members, and employees of the legislature, other current expenses incurred in any operation or function of the legislature, premiums for life, accidental death and dismemberment, hospital, medical, surgical and major medical insurance for members of the legislature during their terms of office, and for employees of the legislature during the period of their employment, and capital outlay items necessary for any operation or function of the legislature. The signature of the president pro tempore of the senate or the speaker of the house of representatives on any voucher or claim for payment shall be

sufficient authority for the state controller to pay the same. Expenses for any interim activity of the legislature or legislators shall be paid in the same manner. Expenses for any interim legislative committees shall be paid in the same manner, if previously authorized by concurrent resolution.

(4) The state controller is hereby directed to devise and implement a financial reporting and control system for the purposes of this act that exempts legislative expenditures from any other provision of law, and the legislative account shall be specifically exempt from the provisions of chapter 35, title 67, Idaho Code, and shall be specifically exempt from the provisions of chapter 36, title 67, Idaho Code. Such system must produce a report as of the end of each calendar month that clearly shows additions to the account, the unexpended balance in the account, the expenditures to date, and the expenditures for the month reported, suitably detailed in such manner as the presiding officers may instruct the state controller. A copy of such report must be delivered to the president pro tempore of the senate and the speaker of the house of representatives and to the governor by no later than the fifth working day of the following month.

History.

I.C., § 67-451, as added by 1971, ch. 205, § 2, p. 896; am. 1974, ch. 239, § 1, p. 1601; am. 1977, ch. 27, § 1, p. 49; am. 1978, ch. 278, § 1, p. 675; am. 1980, ch. 392, § 1, p. 996; am. 1985, ch. 1, § 1, p. 3; am. 1988, ch. 145, § 1, p.

265; am. 1989, ch. 392, § 1, p. 972; am. 1989, ch. 393, § 1, p. 975; am. 1991, ch. 58, § 1, p. 111; am. 1993, ch. 393, § 1, p. 1456; am. 1994, ch. 180, § 169, p. 420; am. 2000, ch. 373, § 1, p. 1232; am. 2001, ch. 305, § 1, p. 1111; am. 2007, ch. 273, § 1, p. 800.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 273, in subsection (2), substituted "January 1, 2008" for "June 1, 2001," and increased the dollar amounts of transfers from the general fund into the legislative account.

Effective Dates.

Section 2 of S.L. 2007, ch. 273 provided that the act should take effect on and after January 1, 2008.

67-451A. Legislative legal defense fund created. — There is hereby created in the state treasury the legislative legal defense fund. The legislative legal defense fund shall consist of such moneys as are placed into it by appropriations and shall be continuously appropriated to the senate and house of representatives. The legislative legal defense fund shall be specifically exempt from the provisions of chapter 35, title 67, Idaho Code, and from the provisions of chapter 36, title 67, Idaho Code. The president pro tempore of the senate and the speaker of the house of representatives are hereby authorized to make expenditures out of the fund for any necessary legal expenses of the legislature.

History.

I.C., § 67-451A, as added by 2012, ch. 335, § 1, p. 929.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2012, ch. 335 provided

"There is hereby appropriated, and the State Controller shall transfer, \$200,000 from the

General Fund to the Legislative Legal Defense Fund, on July 1, 2012, or as soon thereafter as is practicable. Of the amount trans-

ferred, fifty percent (50%) shall be available to the Senate and fifty percent (50%) to the House of Representatives."

67-453. Statements regarding proposed constitutional amendments. — (1) Whenever the legislature shall have directed the submission of a proposal to amend the constitution of the state of Idaho to the electors, the legislative council shall, not less than one hundred twenty (120) days prior to the date of the election at which the proposed amendment will be submitted to the people, prepare and file with the secretary of state a dossier containing the following:

(a) A brief statement setting forth in simple, understandable language the meaning and purpose of the proposed amendment and the result to be accomplished by such amendment. The statement shall be included in the publications of the proposed amendment required by law of the secretary of state, and shall be printed on the official ballot by which such proposed amendment is submitted to the electors; and

(b) A concise presentation of the major arguments advanced by the proponents and opponents of the proposed amendment designed to represent as fairly as possible the arguments relative to the proposed amendment. In preparing such arguments, the legislative council may seek the advice and suggestions of known supporters and opponents or any other persons or groups and may, in its sole discretion, use any of the suggested arguments. If any such suggestions are utilized by the legislative council, no recognition shall be given to the persons or groups which submitted the argument. The arguments shall be published in the publications required by law of the secretary of state, but shall not appear on the ballot by which such proposed amendment is submitted to the electors.

(2) The secretary of state shall cause to be printed in either the voters' pamphlet pursuant to section 34-1812C, Idaho Code, or in a pamphlet similar to the voters' pamphlet, the arguments prepared pursuant to subsection (1) of this section and the question that will be on the general election ballot.

History.

I.C., § 67-453, as added by 1976, ch. 235,
§ 1, p. 827; am. 2007, ch. 201, § 1, p. 618.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 201, redesignated the introductory paragraph as subsection

(1) and former subsections (1) and (2) as (1)(a) and (1)(b); and added subsection (2).

67-460. Powers of committee. — The joint legislative oversight committee shall have the following powers:

(1) To direct the director of legislative performance evaluations in accordance with section 67-461, Idaho Code, to review the performance of any state agency or program and to prepare reports for submission to the joint legislative oversight committee.

(2) To contract with private individuals or entities for the conduct of performance evaluations or portions thereof.

(3) To examine witnesses, to require the appearance of any person and the production of papers or records, including books, accounts, documents, computer records, and other materials, and to order the appearance of any person for the purpose of producing papers or records, including books, accounts, documents, computer records, and other materials, as is provided other legislative committees.

(4) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law.

(5) To determine that a witness has perjured himself by testifying falsely before the committee, and to direct the attorney general to institute legal proceedings as provided by law.

(6) To conduct meetings at such times as the cochairmen deem necessary.

(7) To issue subpoenas upon the signature of either of the cochairmen; provided that the district court in and for the county in which any inquiry, evaluation, investigation, hearing or proceeding may take place shall have the power to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or the refusal to testify or produce papers or records, including books, accounts, documents, computer records, and other materials, in court.

History.

I.C., § 67-460, as added by 1993, ch. 327,
§ 3, p. 1186; am. 1996, ch. 32, § 1, p. 83; am.

1996, ch. 65, § 3, p. 188; am. 2007, ch. 90,
§ 27, p. 246.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 90, corrected
the designation of the last paragraph.

CHAPTER 5

ENACTMENT AND OPERATION OF LAWS

SECTION.

67-501. Endorsement of bills.

SECTION.

67-505. Bills not returned.

67-501. Endorsement of bills. — Every bill must, as soon as delivered to the governor, be endorsed as follows: “This bill was received by the governor this day of,”

History.

R.S., § 150; am. R.C., § 63; reen. C.L.,

§ 63; C.S., § 104; I.C.A., § 65-501; am. 2007,
ch. 90, § 28, p. 246.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 90, deleted
“nineteen” in the date line.

67-505. Bills not returned. — Every bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state in the following form: “This bill having remained with the governor five (5) days (Sundays excepted), and the legislature being in session, it has become a law this . . . day of . . . , . . . ,” which certificate must be signed by the secretary of state and deposited with the laws in his office. Where the legislature by adjournment, prevents the return of a bill, the governor, if he disapproves thereof, shall file the same, with his objections, in the office of the secretary of state within ten (10) days after said adjournment (Sundays excepted) or the same shall become a law.

History.

R.S., § 154; compiled and reen. R.C., § 67; reen. C.L., § 67; C.S., § 108; I.C.A., § 65-505; am. 2007, ch. 90, § 29, p. 246.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 90, deleted the reference to the twentieth century in the date line.

67-510. Statutes and resolutions — When effective.

STATUTORY NOTES

Compiler’s Notes.

Section 1 of S.L. 2009, ch. 343 provided: “If the First Regular Session of the Sixtieth Idaho Legislature has not adjourned sine die on or before May 2, 2009, all acts or sections of acts enacted by the First Regular Session of the Sixtieth Idaho Legislature and signed into law or allowed to become law by the Governor without his signature in which the entire act or sections of those acts would have been effective on July 1, 2009, had the Legislature adjourned sine die on or before May 2, 2009, shall be amended to have the act or the

section of the act become effective on July 1, 2009, and an emergency is declared to exist and shall be deemed incorporated in the title of the bill and the preamble or the body of the law, as applicable. The provisions of this section shall not affect any act or section of an act signed into law or allowed to become law by the Governor without his signature, in which any effective date other than July 1, 2009, has been incorporated in the title of the bill and the preamble or the body of the law, as applicable.”

CHAPTER 7

LEGISLATIVE SERVICES OFFICE

SECTION.

- 67-701. Legislative services office.
- 67-702. Audit function of legislative services office.
- 67-703. Budget and policy analysis — Func-

SECTION.

- tion of legislative services of-
fice.
- 67-704. Research and legislation — Function of legislative services office.

67-701. Legislative services office. — There is hereby created under the direction of the legislative council the legislative services office which shall carry out the professional and nonpartisan responsibilities defined in this chapter. The legislative council shall appoint a director of the legislative services office who shall serve at the pleasure of the council and who may employ such employees and engage the services of such persons and

agencies as may be necessary or desirable in the performance of the legislative council's duties. Employees of the legislative services office are nonclassified, at-will employees and shall serve at the pleasure of the director.

History.

I.C., § 67-701, as added by 2009, ch. 52, § 11, p. 136.

STATUTORY NOTES

Prior Laws.

Former chapter 7 of Title 67, which comprised the following sections, was repealed by S.L. 2009, ch. 52, § 2, effective March 24, 2009.

67-701. Office of legislative counsel created — Selection — Term. [1947, ch. 40, § 1, p. 43.]

67-702. Requirements for selection. [1947, ch. 40, § 2, p. 43.]

67-703. Duties of legislative counsel. [1947, ch. 40, § 3, p. 43.]

67-704. Assisting in preparation or consideration of bills upon request. [1947, ch. 40, § 4, p. 43.]

67-705. Office. [1947, ch. 40, § 5, p. 43.]

67-706. Compensation — Employees authorized. [1947, ch. 40, § 6, p. 43.]

67-707. Access to law library and official records of state. [1947, ch. 40, § 7, p. 43.]

67-708. Papers and records confidential — Exceptions. [1947, ch. 40, § 8, p. 43.]

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

67-702. Audit function of legislative services office. — (1) The legislative services office at the direction of the legislative council has authority to:

- (a) Perform an annual audit of the statewide annual financial report prepared by the state controller in accordance with generally accepted government auditing standards.
 - (b) Perform an annual audit of federal financial assistance provided to the state that meets the requirements established by the federal government.
 - (c) Perform a management review of each executive department of state government at least once in a three (3) year period. Management reviews shall cover the period since the last review and may include evaluation of internal controls over financial and program activities and other matters related to the department's operations.
 - (d) Provide audit services to any unit of state government or public institution that requests services, if authorized by the legislative council.
 - (e) Report to the attorney general all facts which may indicate malfeasance, illegal expenditure of public funds or misappropriation of public funds or public property for such investigation or action, civil or criminal, as the attorney general may deem necessary. The governor and state controller shall also be notified when the report is made to the attorney general pursuant to this subsection. The legislature shall be informed through the regular audit process pursuant to section 67-429, Idaho Code.
 - (f) Be the official repository of all audit reports of the state and political subdivisions that are required to be audited pursuant to sections 67-450B and 67-450C, Idaho Code.
- (2) The legislative council reserves the right to audit or examine any and

every fund in the state treasury and any institution, association, board or other defined entity created by, or that receives an appropriation from, the legislature.

History.

I.C., § 67-702, as added by 2009, ch. 52,
§ 11, p. 136.

STATUTORY NOTES**Prior Laws.**

Former § 67-702 was repealed. See Prior
Laws, § 67-701.

the signature of the governor, effective July 1,
2009.

Effective Dates.

S.L. 2009, chapter 52 became law without

67-703. Budget and policy analysis — Function of legislative services office. — The legislative services office at the direction of the legislative council has authority to:

(1) Provide the legislature with research and analysis of current and projected state revenue, state expenditure and state tax expenditures;

(2) Provide the legislature with a report analyzing the governor's proposed levels of revenue and expenditures for budgets and supplemental budget requests submitted to the legislature;

(3) Provide an analysis of the impact of the governor's proposed revenue and expenditure plans for the next fiscal year;

(4) Review and evaluate requests for appropriations, including proposed plans and policies related to such requests, and make recommendations to the joint finance-appropriations committee and the legislature in relation thereto;

(5) Prepare draft legislation, statements of purpose and fiscal notes that individually or collectively represent motions affirmatively voted upon by the senate finance and house of representatives appropriations committees to provide each state agency with an annual budget;

(6) Have access, with or without prior notice, during regular operating hours to any records or other documents maintained by any state agency relating to their expenditures, revenues, operations and structure;

(7) Conduct research on matters of economic and fiscal policy and report to the legislature on the result of the research;

(8) Provide economic reports and studies on the state of the state's economy, including trends and forecasts for consideration by the legislature;

(9) Conduct budget and tax studies and provide general fiscal and budgetary information;

(10) Review and make recommendations on the operation of state programs in order to appraise the implementation of state laws regarding the expenditure of funds and to recommend means of improving their efficiency;

(11) Recommend to the legislature changes in the mix of revenue sources for programs, in the percentage of state expenditures devoted to major programs, and in the role of the legislature in overseeing state government expenditures and revenue projections;

(12) Make a continuing study and investigation of the building needs of the government of the state of Idaho, including, but not limited to, the following: the current and future requirements of new buildings, the maintenance of existing buildings, rehabilitating and remodeling of old buildings, the planning of administrative offices, and exploring the methods of financing buildings and related costs;

(13) Conduct studies of state and local finances, analyzing and making recommendations to the legislature on issues including levels of state support for political subdivisions, basic levels of local need, balances of local revenues and options, relationship of local taxes to individuals' abilities to pay and financial reporting by political subdivisions; and

(14) Develop and make available to the legislature and its standing or special legislative committees such fiscal information as will assist the legislature or any legislative committee in its deliberations.

History.

I.C., § 67-703, as added by 2009, ch. 52,
§ 11, p. 136.

STATUTORY NOTES

Prior Laws.

Former § 67-703 was repealed. See Prior
Laws, § 67-701.

the signature of the governor, effective July 1,
2009.

Effective Dates.

S.L. 2009, chapter 52 became law without

67-704. Research and legislation — Function of legislative services office. — (1) The legislative services office at the direction of the legislative council shall have authority to prepare or assist in the preparation or amendment of legislative bills at the request of any committee or member of the senate or house of representatives. Upon request from the governor, lieutenant governor, attorney general, state controller, secretary of state, superintendent of public instruction or state treasurer, the legislative services office at the direction of the legislative council shall have authority to prepare legislative bills for such constitutional officer.

(2) In administering this section the legislative services office shall establish and maintain a legislative reference library.

(3) The legislative services office shall review and analyze administrative rules in accordance with section 67-454, Idaho Code, and perform other duties as required by the legislative council.

(4) The legislative services office is directed to furnish such secretarial and other staff assistance as the citizens' committee on legislative compensation and the redistricting commission may require in the performance of their duties.

History.

I.C., § 67-704, as added by 2009, ch. 52,
§ 11, p. 136; am. 2009, ch. 224, § 1, p. 704.

STATUTORY NOTES

Prior Laws.

Former § 67-704 was repealed. See Prior Laws, § 67-701.

Amendments.

The 2009 amendment, by ch. 52, reenacted this section to read: **“Research and legislation — Function of legislative services office.** (1) The legislative services office at the direction of the legislative council shall have authority to prepare or assist in the preparation or amendment of legislative bills at the request of any committee or member of the senate or house of representatives. From August 1 until December 1 of each year, upon request from the governor, lieutenant governor, attorney general, state controller, secretary of state, superintendent of public instruction or state treasurer, the legislative services office at the direction of the legislative council shall have authority to prepare legislative bills for such constitutional officer.

“(2) In administering this section the legislative services office shall establish and maintain a legislative reference library.

“(3) The legislative services office shall review and analyze administrative rules in accordance with section 67-454, Idaho Code, and perform other duties as required by the legislative council.

“(4) The legislative services office is directed to furnish such secretarial and other staff assistance as the citizens’ committee on legislative compensation and the redistricting commission may require in the performance of their duties.”

The 2009 amendment, by ch. 224, in the last sentence in subsection (1), deleted “From August 1 until December 1 of each year” from the beginning.

Effective Dates.

S.L. 2009, chapter 52 became law without the signature of the governor, effective July 1, 2009.

CHAPTER 8

EXECUTIVE AND ADMINISTRATIVE OFFICERS —
GOVERNOR AND LIEUTENANT-GOVERNOR

SECTION.

67-802. Office of governor — Duties of governor.

67-805. Acting governor to perform same duties — Compensation of president pro tempore of the senate or speaker of the house of representatives when acting as governor.

67-806. Coordination of programs relating to the Idaho national engineering laboratory. [Repealed.]

67-806A. [Amended and Redesignated.]

SECTION.

67-809. Duties of lieutenant governor — Actual and necessary expenses — Compensation of senate president pro tempore when acting as lieutenant governor.

67-818. Coordination of policy and programs related to threatened species and endangered species in Idaho.

67-821. Coordination of policy and programs related to drug and substance abuse.

67-802. Office of governor — Duties of governor. — The office of the governor shall be composed of: the state liquor division, as provided by chapter 2, title 23, Idaho Code; the military division, as provided by title 46, Idaho Code; the division of financial management; and such other divisions and units as are established or assigned by law, or created through administrative action of the governor.

The governor shall appoint an administrator for each division, with the advice and consent of the senate. Administrators shall serve at the pleasure of the governor, and shall be exempt from the provisions of chapter 53, title 67, Idaho Code. Other subordinate staff necessary to accomplish a division’s mission shall be subject to the provisions of chapter 53, title 67, Idaho Code.

The supreme executive power of the state is vested by section 5, article IV, of the constitution of the state of Idaho, in the governor, who is expressly

charged with the duty of seeing that the laws are faithfully executed. In order that he may exercise a portion of the authority so vested, the governor is authorized and empowered to implement and exercise those powers and perform those duties by issuing executive orders from time to time which shall have the force and effect of law when issued in accordance with this section and within the limits imposed by the constitution and laws of this state. Such executive orders, when issued, shall be serially numbered for each calendar year and may be referred to and cited by such numerical designation and title. Each executive order issued hereunder shall be effective only after signature by the governor, attestation by and filing with the secretary of state, who shall keep a permanent register and file of such orders in the same manner as applies to acts of the legislature. In addition, each executive order required by chapter 52, title 67, Idaho Code, to be published in the administrative bulletin shall be filed with the administrative rules coordinator and published in the bulletin. Each such executive order issued by the governor must prescribe a date after which it shall cease to be effective, which shall be within four (4) calendar years of the effective date of such order, and if no date after which such order shall cease to be effective is contained in the order, then such order shall cease to be effective four (4) calendar years from the issuance thereof, unless renewed by subsequent executive order. The governor may modify or repeal any executive order by issuance of a new executive order. The procedures expressly set forth in this section shall be sufficient to make an executive order effective.

In addition to those powers prescribed above, and those prescribed by the constitution, the governor has the powers, and may perform the duties prescribed in this section and the following sections:

1. To supervise the official conduct of all executive and ministerial officers.

2. To see that all offices are filled, and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session.

3. To make the appointments and supply the vacancies provided by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States.

5. Whenever any suit or legal proceeding is pending in this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state.

6. He may require the attorney general or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid any prosecuting attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars (\$1,000) each, payable out of the state treasury, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed, or is charged with the commission of, an offense punishable with death; and

also offer like rewards, not exceeding five hundred dollars (\$500) each, in cases of felony, where the offense is not punishable with death.

9. To perform such duties respecting fugitives from justice as are prescribed by the penal code.

10. To issue and transmit election proclamations as prescribed by law.

11. He may require any officer to make special reports to him in writing on demand.

12. He has such other powers and may perform such other duties as are devolved upon him by any law of this state.

History.

R.S., § 180; am. 1890-1891, p. 198, § 1; reen. 1899, p. 135, § 1; reen., R.C. & C.L., § 90; C.S., § 128; I.C.A., § 65-702; am. 1974,

ch. 22, § 2, p. 592; am. 1980, ch. 358, § 1, p. 922; am. 1980, ch. 361, § 1, p. 937; am. 1986, ch. 301, § 1, p. 750; am. 1993, ch. 216, § 98, p. 587; am. 2009, ch. 23, § 61, p. 53.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 23, substi-

tuted "state liquor division" for "state liquor dispensary" in the first paragraph.

67-805. Acting governor to perform same duties — Compensation of president pro tempore of the senate or speaker of the house of representatives when acting as governor. — (1) Every provision in the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him, extends to the person performing for the time being the duties of acting governor.

(2) Notwithstanding any other provisions of law to the contrary, when performing the duties of acting governor, the president pro tempore of the senate or the speaker of the house of representatives will receive, in addition to his daily legislative compensation, an amount equal to the difference between that daily legislative compensation and the daily salary of the governor.

History.

R.S., § 183; reen. R.C. & C.L., § 93; C.S.,

§ 131; I.C.A., § 65-705; am. 1977, ch. 105, § 7, p. 222; am. 2009, ch. 29, § 1, p. 80.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 29, in the section catchline, added "— Compensation of president pro tempore of the senate or

speaker of the house at representative when acting as governor"; and added the subsection (1) designation and subsection (2).

67-806. Coordination of programs relating to the Idaho national engineering laboratory. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-806, as added by 1989, ch. 335, § 2, p. 847,

was repealed by S.L. 2007, ch. 83, § 11. See § 39-105.

67-806A. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 67-806A was amended and redes-

ignated as § 57-822 by S.L. 2007, ch. 83,
§ 12.

67-809. Duties of lieutenant governor — Actual and necessary expenses — Compensation of senate president pro tempore when acting as lieutenant governor. — (1) The lieutenant governor shall perform on a day to day basis such duties in and for the government of this state as the governor may from time to time direct. The lieutenant governor shall perform such additional duties as the governor may deem necessary and desirable to promote the improvement of state government and the development of the human, natural and industrial resources of this state. At the written direction of the governor, the lieutenant governor may represent the state in negotiations, compacts, hearings and other matters dealing with the states or the federal government. He shall cooperate with all state and local governmental agencies to promote and encourage the orderly development of the resources of Idaho.

The lieutenant governor shall also exercise the powers and privileges of the office of governor and presidency of the senate as provided by sections 12 and 13, article IV of the constitution of the state of Idaho.

(2) The lieutenant governor shall be entitled to receive the following expense allowances:

(a) As unvouchered expense allowances:

(i) While performing the duties of acting governor, the difference between the daily salary of lieutenant governor and the daily salary of governor, which amount shall be in addition to the salary as lieutenant governor. Such amount shall not be paid for any day on which the lieutenant governor claims an unvouchered expense allowance as president of the senate.

(ii) For each day spent serving as president of the senate during a legislative session, the per diem authorized for a member of the legislature by the citizen's committee on legislative compensation.

(iii) Actual mileage expense reimbursement for coming to and returning from any regular, extraordinary or organizational session of the legislature at the same rate as mileage expense reimbursement is made for other state officers and employees.

(iv) For each day actually spent in the office serving as lieutenant governor while the legislature is not in session, the same daily amount of per diem enumerated in subsection (2)(a)(ii) of this section.

(v) For each day actually spent in the office serving as lieutenant governor when the legislature is not in session, the sum of twenty-five dollars (\$25.00) if the lieutenant governor maintains his primary residence in Ada county.

(b) As vouchered expense allowances:

(i) Actual and necessary expenses incurred while serving as president of the senate during a legislative session, subject to the same requirements and limitations as if a member of the legislature.

(ii) Actual and necessary expenses incurred while serving as lieutenant governor or as acting governor.

(3) Unvouchered expense allowances and vouchered expense reimbursement for duties performed as president of the senate shall be paid from the legislative fund. All other compensation and/or allowances for duties performed as the lieutenant governor shall be paid from the appropriation made for the office of the lieutenant governor.

(4) The actual and necessary expenses of the lieutenant governor while performing his official duties as lieutenant governor or as acting governor are hereby expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code (Standard Travel Pay and Allowance Act of 1949).

(5) Notwithstanding any other provisions of law to the contrary, when performing the duties of acting lieutenant governor, the president pro tempore of the senate will receive, in addition to his daily legislative compensation, an amount equal to the difference between that daily legislative compensation and the daily salary of the lieutenant governor.

History.

1959, ch. 48, § 1, p. 103; am. 1967, ch. 232, § 1, p. 685; am. 1967, ch. 407, § 1, p. 1218; am. 1969, ch. 282, § 1, p. 855; am. 1977, ch.

283, § 1, p. 815; am. 1984, ch. 203, § 2, p. 499; am. 2001, ch. 269, § 1, p. 975; am. 2009, ch. 29, § 2, p. 80.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 29, in the section catchline, added “— Compensation of

senate president pro tempore when acting as lieutenant governor”; and added subsection (5).

67-818. Coordination of policy and programs related to threatened species and endangered species in Idaho. — (1) There is hereby created in the office of the governor, the “Office of Species Conservation.” The administrator of the office of species conservation shall be the official in the state designated to oversee implementation of federal recovery plans, as provided in 16 U.S.C. section 1533(f), and to fulfill the duties provided by this section. The administrator shall be appointed by, and serve at the pleasure of, the governor and shall be subject to confirmation by the state senate.

(2) The duties of the office of species conservation shall include:

(a) Coordination of all state departments and divisions with duties and responsibilities affecting endangered species, threatened species, candidate species, species petitioned to be listed, and rare and declining species as defined in section 36-2401, Idaho Code;

(b) Coordinating state implementation and response to federal recovery plans, biological opinions, guidance and projects among all state and local governments in the state of Idaho;

(c) Participation in regional efforts to cooperatively address endangered species, threatened species, candidate and petitioned species, and rare and declining species;

(d) Providing input and comment to federal and state agencies, and tribes

on issues relating to endangered species, threatened species, candidate and petitioned species, and rare and declining species;

(e) Cooperating and consulting with the department of fish and game, the department of lands, the department of water resources, the department of agriculture, and the department of parks and recreation regarding agreements pursuant to 16 U.S.C. section 1533, 16 U.S.C. section 1535 and 16 U.S.C. section 1539;

(f) Negotiating agreements with federal agencies concerning endangered species, threatened species, candidate species, petitioned species, and rare and declining species including, but not limited to, agreements pursuant to 16 U.S.C. section 1533(d) and 16 U.S.C. section 1539(a), other than those agreements negotiated pursuant to 16 U.S.C. section 1535;

(g) Providing the people of the state of Idaho with an ombudsman who can listen to citizens being harmed or hindered by the regulations of the ESA and direct them to the appropriate state or federal agency and/or speak on their behalf, as deemed appropriate by the ombudsman, to address issues or concerns related to the ESA;

(h) Serve as a repository for agreements and plans among governmental entities in the state of Idaho for the conservation of rare and declining species, petitioned, candidate, threatened and endangered species.

(3) State policy and management plans developed pursuant to this section shall be developed in accordance with the following subsections:

(a) State policy on rare and declining, petitioned, candidate, threatened, and endangered species and state management plans shall be developed in consultation with the appropriate state agencies. The appropriate state agency for wildlife and plant management issues is the department of fish and game. The appropriate state agency for timber harvest activities, oil and gas exploration activities and for mining activities is the department of lands. The appropriate state agencies for agricultural activities are the department of agriculture and the Idaho state soil and water conservation commission. The appropriate state agency for public road construction is the transportation department. The appropriate state agency for water rights is the department of water resources. The appropriate state agency for water quality is the department of environmental quality. The appropriate state agency for outfitting and guiding activities is the Idaho outfitters and guides licensing board;

(b) State management plans shall be the policy of the state of Idaho, but are subject to legislative approval, amendment or rejection by concurrent resolution. State management plans shall be subject to public notice and comment but shall not be subject to judicial review.

(4) The governor's office of species conservation shall prepare a report to the legislature recommending a plan to develop state conservation assessments and strategies for rare and declining species in the state of Idaho and submit that report and recommendation to the legislature. The report and recommendation are subject to legislative approval, amendment or rejection by concurrent resolution.

(5) The state asserts primacy over the management of its fish and wildlife. Accordingly, any introduction or reintroduction of any federally

listed species onto lands within the state or into state waters, including those actions that would impair or impede the state's primacy over its land and water, without state consultation and approval is against the policy of the state of Idaho.

(6) No provision of this section shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV of the constitution of the state of Idaho, and title 42, Idaho Code.

History.

I.C., § 67-818, as added by 2000, ch. 270, § 3, p. 77; am. 2001, ch. 103, § 99, p. 253; am.

2003, ch. 129, § 5, p. 379; am. 2005, ch. 402, § 1, p. 1367; am. 2010, ch. 279, § 33, p. 719; am. 2013, ch. 149, § 1, p. 346.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.
Department of environmental quality, § 39-104.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of water resources, § 42-1701 et seq.

Idaho outfitters and guides licensing board, § 36-2105.

Idaho state soil and water conservation commission, § 22-2718.

Idaho transportation department, § 40-501 et seq.

Amendments.

The 2010 amendment, by ch. 279, substituted "Idaho state soil and water conservation commission" for "soil conservation commission" in the fourth sentence in paragraph (3)(a).

The 2013 amendment, by ch. 149, inserted subsection (5) and renumbered former subsection (5) as subsection (6).

67-821. Coordination of policy and programs related to drug and substance abuse. — (1) There is hereby established in the office of the governor the "Office of Drug Policy." The administrator of the office of drug policy shall be the official in the state designated to oversee and execute the coordination of all drug and substance abuse programs within the state of Idaho. The administrator shall be appointed by and shall serve at the pleasure of the governor, and shall be subject to confirmation by the state senate.

(2) The office of drug policy shall:

(a) Cooperate and consult with counties, cities and local law enforcement on programs, policies and issues in combating Idaho's illegal drug and substance abuse problem;

(b) Serve as a repository of agreements, contracts and plans concerning programs for combating illegal drug and substance abuse from community organizations and other relevant local, state and federal agencies and shall facilitate the exchange of this information and data with relevant interstate and intrastate entities;

(c) Provide input and comment on community, tribal and federal plans, agreements and policies relating to illegal drug and substance abuse; and

(d) Coordinate public and private entities to develop, create and promote statewide campaigns to reduce or eliminate substance abuse.

History.

I.C., § 67-821, as added by 2007, ch. 69, § 1, p. 183; am. 2012, ch. 107, § 14, p. 284.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 107, deleted former subsection (3), which read: "The administrator shall act as chairperson of the interagency committee on substance abuse prevention and treatment, as created in section 39-303, Idaho Code, to ensure that the interagency committee coordinates and di-

rects all state entities regarding substance abuse prevention and treatment delivery services statewide."

Effective Dates.

Section 4 of S.L. 2007, ch. 69 declared an emergency. Approved March 13, 2007.

CHAPTER 12**STATE TREASURER****SECTION.**

67-1202. Funds of state board of land commissioners.

67-1204. Money to be kept in vault — Penalty.

67-1212. Unpaid warrants — Interest — Record.

67-1222. Reports to be filed — Bond issues. [Repealed.]

SECTION.

67-1224. Idaho credit rating enhancement committee — Membership — Compensation — Quorum — Meetings — Personnel.

67-1225. Powers and duties of credit rating enhancement committee.

67-1226. Local government investment pool.

67-1202. Funds of state board of land commissioners. — It is the duty of the treasurer in relation to funds within the control of the state board of land commissioners to receive from and receipt to the board for money and evidences of indebtedness, subject, however, to final payment, which are accepted by banks as cash in the ordinary course of business, and to pay out of such funds orders drawn thereon by the board, but every order must specify the particular fund upon which it is drawn.

History.

Based upon 1909, p. 360, §§ 2, 3, and 1909, p. 363, § 1; compiled and reen. C.L., § 117a;

C.S., § 158; I.C.A., § 65-1102; am. 2007, ch. 284, § 1, p. 814.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 284, in the section catchline, deleted "Purchase of warrants for board" from the end; and deleted the last paragraph, which read: "The state treasurer is authorized and empowered to pur-

chase for the state board of land commissioners for its use and benefit, under written authority from said board, all warrants drawn on the general fund of the state of Idaho."

67-1204. Money to be kept in vault — Penalty. — (1) All state moneys in the custody of the state treasurer not otherwise deposited or invested as is or may be provided by law, shall be kept in the vault and safe as provided for that purpose in the capitol building and in no other place.

(2) During the capitol building renovation, beginning in fiscal year 2007, or during relocation due to an emergency, these same moneys as set forth

above, shall be kept in a vault within the office of the state treasurer's temporary location. Upon completion of this renovation, the provisions of subsection (1) of this section shall apply.

(3) A violation of this section shall subject the state treasurer, upon conviction thereof, to pay a fine of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), or to imprisonment in the state prison for a period of not less than one (1) nor more than ten (10) years, or to both such fine and imprisonment.

History.

Based on 1905, p. 31, § 1; compiled and reen. R.C., § 118a; reen. C.L., § 118a; C.S.,

§ 160; I.C.A., § 65-1104; am. 1980, ch. 84, § 3, p. 183; am. 2007, ch. 41, § 2, p. 101.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 41, added the subsection (1) and (3) designations to existing provisions and added subsection (2).

Effective Dates.

Section 4 of S.L. 2007, ch. 41 declared an emergency. Approved March 2, 2007.

67-1212. Unpaid warrants — Interest — Record. — (1) All warrants drawn upon funds in which the balance is insufficient to pay them must be reported to the state treasurer by the state controller. All such warrants shall be registered by the state treasurer as follows: he shall date and sign the report and return the same to the state controller who shall notify the respective payees. It is the duty of the state treasurer to keep a report of all warrants not paid for want of moneys, in which report such warrants shall be listed in numerical order, and when paid the treasurer shall note the amount of interest paid and the date of payment. Any such warrants registered by the state treasurer shall from date of registration until paid bear interest at a rate to be fixed by the state treasurer.

(2) In lieu of registering warrants as provided in subsection (1) of this section, the state treasurer shall have authority to:

(a) Pay such warrants out of any moneys available allowing the fund to remain negative for up to thirty (30) days; the state treasurer shall charge the fund or account for which such moneys are advanced an amount of interest substantially equal to what could have been earned had the advanced moneys been invested, and the amount of the interest shall constitute an appropriation from the fund or account for which the advancement was made. If moneys are not sufficient in the fund after thirty (30) days, unless otherwise excepted by law, the state treasurer shall make inter-fund transfers subject to the following requirements:

(i) All transfers shall be identified by: available funds from which moneys are borrowed, the fund to which the moneys are transferred, amount of transfer, the anticipated interest rate consistent with the available funds' current rate of return, if applicable, the anticipated repayment date and the reason for the transfer;

(ii) Interest, if applicable, shall be paid on any transfer, where required by law, under this provision;

(iii) The treasurer shall maintain an annual report of all such inter-fund transfers.

(b) Issue tax anticipation notes as provided by chapter 32, title 63, or section 57-1112, Idaho Code.

History.

1864, p. 415, § 5; R.S., § 238; am. 1899, p. 228, § 1; am. 1901, p. 107, § 1; am. R.C., § 125; reen. C.L., § 125; am. 1919, ch. 123, § 1, p. 408; C.S., § 168; am. 1927, ch. 129, § 1, p. 172; I.C.A., § 65-1112; am. 1933 (E.S.),

ch. 5, § 1, p. 9; am. 1976, ch. 42, § 22, p. 90; am. 1977, ch. 222, § 1, p. 665; am. 1983, ch. 4, § 16, p. 6; am. 1983, ch. 140, § 1, p. 347; am. 1994, ch. 180, § 178, p. 420; am. 2010, ch. 192, § 1, p. 410.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 192, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 2 of S.L. 2010, ch. 192 declared an emergency. Approved March 31, 2010.

67-1222. Reports to be filed — Bond issues. [Repealed.]

Repealed by S.L. 2010, ch. 58, § 1, effective July 1, 2010.

History.

I.C., § 67-1222, as added by 1989, ch. 238, § 1, p. 582; am. 2005, ch. 390, § 1, p. 1261.

67-1224. Idaho credit rating enhancement committee — Membership — Compensation — Quorum — Meetings — Personnel. —

(1) There is hereby established in the office of the state treasurer the Idaho credit rating enhancement committee. The committee shall consist of the following members: the state treasurer, the administrator of the division of financial management, one (1) senator appointed by the president pro tempore of the senate and one (1) member of the house of representatives appointed by the speaker of the house of representatives. Other members of the committee shall be appointed by the governor after considering recommendations of the state treasurer and shall consist of one (1) member from each of the following entities knowledgeable on matters of public finance, including the Idaho state municipal bond bank, Idaho housing and finance association, Idaho state building authority, the department of education as a representative of the school bond guarantee fund [public school guarantee fund] and one (1) member at large.

(2) The term of an appointed member is two (2) years, but an appointed member serves at the pleasure of the appointing authority. Before the expiration of the term of an appointed member, the appointing authority shall appoint a successor. If there is a vacancy for any reason in the office of an appointed member, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the committee shall be entitled to compensation and expenses as provided in section 59-509(b), Idaho Code, which shall be paid by the state treasurer.

(4) The state treasurer shall serve as chairperson of the committee, with such powers and duties necessary for the performance of that office as the committee determines appropriate.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) The committee shall meet at times and places specified by the call of the chairperson or by a majority of the members of the committee.

(7) The office of the state treasurer shall provide the committee with office space and clerical and other administrative support.

History.

I.C., § 67-1224, as added by 2005, ch. 159, § 1, p. 491; am. 2013, ch. 219, § 1, p. 514.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Idaho housing and finance association, § 67-6201 et seq.

Idaho state building authority, § 67-6401 et seq.

Amendments.

The 2013 amendment, by ch. 219, deleted

the first sentence in subsection (6), which read, "The committee shall meet at least once every six (6) months at a time and place determined by the committee."

Compiler's Notes.

The bracketed insertion near the end of subsection (1) was added by the compiler to correct the name of the referenced fund. See § 33-5309.

67-1225. Powers and duties of credit rating enhancement committee. — The Idaho credit rating enhancement committee shall advise the governor and the legislature regarding policies and action that enhance and preserve the state's credit rating and maintain the future availability of low cost capital financing. In carrying out this function, the committee shall report findings and recommendations to the governor and the speaker of the house of representatives and the president pro tempore of the senate by August 1 of each year.

History.

I.C., § 67-1225, as added by 2005, ch. 159, § 2, p. 491; am. 2013, ch. 219, § 2, p. 514.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 219, deleted former subsections (1) and (2), relating to debt

capacity targets, and deleted the designation from former subsection (3).

67-1226. Local government investment pool. — The state treasurer is hereby authorized to establish and maintain a pooled investment program for the benefit of municipalities, districts, political subdivisions and political or public corporations of the state of Idaho. Any municipality, district, political subdivision or political or public corporation is hereby authorized to invest funds not immediately required for activities of such entity in the pooled investment program. Notwithstanding the provisions of any statute of the state of Idaho to the contrary, the state treasurer may invest the funds of a pooled investment program in any investment the state treasurer is authorized by law to acquire using the idle moneys of the state

of Idaho. The costs of investing such funds pursuant to this section shall be paid from the funds invested or the earnings on such funds.

History.

I.C., § 67-1226, as added by 2011, ch. 213,
§ 1, p. 600.

CHAPTER 14

ATTORNEY GENERAL

SECTION.

67-1401. Duties of attorney general.

67-1410. Internet crimes against children
unit.

SECTION.

67-1411. Internet crimes against children
fund.

67-1401. Duties of attorney general. — Except as otherwise provided in this chapter, it is the duty of the attorney general:

(1) To perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions and other state entities, in all courts and before all administrative tribunals or bodies of any nature. Representation shall be provided to those entities exempted pursuant to the provisions of section 67-1406, Idaho Code. Whenever required to attend upon any court or administrative tribunal, the attorney general shall be allowed necessary and actual expenses, all claims for which shall be audited by the state board of examiners.

(2) To advise all departments, agencies, offices, officers, boards, commissions, institutions and other state entities in all matters involving questions of law.

(3) After judgment in any of the causes referred to in this chapter, to direct the issuing of such process as may be necessary to carry the same into execution.

(4) To account for and pay over to the proper officer all moneys received which belong to the state.

(5) To supervise nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding property subject to any public or charitable trust and to enforce whenever necessary any noncompliance or departure from the general purpose of such trust and, in order to accomplish such purpose, said nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding property subject to any public or charitable trust are subject at all times to examination by the attorney general, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, said trustee or trustees may have failed to comply with trusts said trustee or trustees have assumed or may have departed from the general purpose for which it was formed. In case of any such failure or departure, the attorney general shall institute, in the name of the state, any proceeding necessary to enforce compliance with the terms of the trust or any departure therefrom.

(6) To give an opinion in writing, without fee, to the legislature or either house thereof, or any senator or representative, and to the governor,

secretary of state, treasurer, state controller, and the superintendent of public instruction, when requested, upon any question of law relating to their respective offices. The attorney general shall keep a record of all written opinions rendered by the office and such opinions shall be compiled annually and made available for public inspection. All costs incurred in the preparation of said opinions shall be borne by the office of the attorney general. A copy of the opinions shall be furnished to the supreme court and to the state librarian.

(7) When required by the public service, to repair to any county in the state and assist the prosecuting attorney thereof in the discharge of duties.

(8) To bid upon and purchase, when necessary, in the name of the state, and under the direction of the state controller, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

(9) Whenever the property of a judgment debtor in any judgment mentioned in subsection (8) of this section has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance, taking precedence of the judgment in favor of the state, under the direction of the state controller, to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

(10) When necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as may be necessary to set aside and annul all conveyances fraudulently made by such judgment debtors; the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

(11) To exercise all the common law power and authority usually appertaining to the office and to discharge the other duties prescribed by law.

(12) To report to the governor, at the time required by this section, the condition of the affairs of the attorney general's office and of the reports received from prosecuting attorneys.

(13) To appoint deputy attorneys general and special deputy attorneys general and other necessary staff to assist in the performance of the duties of the office. Such deputies and staff shall be nonclassified employees within the meaning of section 67-5302, Idaho Code.

(14) To establish a medicaid fraud control unit pursuant to the provisions of section 56-226, Idaho Code, and to exercise concurrent investigative and prosecutorial authority and responsibility with county prosecutors to prosecute persons for the violation of the criminal provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that are not defined in said chapter 2, title 56, Idaho Code, but that involve or are directly related to the use of medicaid program funds or services provided through the medicaid program.

(15) To seek injunctive and any other appropriate relief as expeditiously as possible to preserve the rights and property of the residents of the state

of Idaho, and to defend as necessary the state of Idaho, its officials, employees and agents in the event that any law or regulation violating the public policy set forth in the Idaho health freedom act, chapter 90, title 39, Idaho Code, is enacted by any government, subdivision or agency thereof.

(16) To establish an internet crimes against children unit pursuant to the provisions of section 67-1410, Idaho Code, and to exercise concurrent investigative and prosecutorial authority and responsibility with county prosecutors to prosecute persons for the violation of the criminal provisions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which may also encompass criminal offenses that are not defined in said sections but that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.

History.

1884, p. 31, § 3; R.S., § 250; am. 1901, p. 162, § 1; compiled and reen. R.C., § 142; reen. C.L., § 142; C.S., § 178; am. 1923, ch. 110, § 1, p. 139; I.C.A., § 65-1301; am. 1963, ch. 161, § 1, p. 475; am. 1972, ch. 203, § 1, p. 561; am. 1976, ch. 366, § 1, p. 1202; am. 1986,

ch. 6, § 1, p. 44; am. 1994, ch. 180, § 181, p. 420; am. 1995, ch. 141, § 1, p. 599; am. 1998, ch. 245, § 1, p. 806; am. 2001, ch. 61, § 2, p. 112; am. 2007, ch. 341, § 10, p. 1000; am. 2010, ch. 46, § 2, p. 84; am. 2013, ch. 245, § 1, p. 593.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 341, added subsection (14).

The 2010 amendment by ch. 46, added subsection (15).

The 2013 amendment, by ch. 245, substi-

tuted "this chapter" for "the first subdivision" in subsection (3); substituted "subsection (8) of this section" for "the preceding subdivision" in subsection (9); substituted "section" for "code" in subsection (12); and added subsection (16).

67-1410. Internet crimes against children unit. — (1) There is hereby established in the office of the attorney general the internet crimes against children unit (ICAC) that shall have the authority and responsibilities as set forth in this section.

(2) The ICAC shall have the authority and responsibility to conduct a statewide program for the investigation and prosecution of violations of all applicable Idaho laws that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.

(3) The ICAC shall be under the exclusive control of the attorney general.

(4) The attorney general may request and receive the assistance of, and may enter into written agreements with, any prosecutor or law enforcement agency as necessary to implement the duties and responsibilities assigned to the ICAC under this section. This will include contracting for the assistance of law enforcement personnel in the investigation of any violation of any applicable laws pertaining to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses. The attorney general may renew, suspend or revoke any ICAC agreement with a law enforcement agency at any time.

(5) The attorney general shall have the authority to designate ICAC task force agents. ICAC task force agents shall be commissioned law enforcement officers employed by law enforcement agencies.

(a) The designation of an ICAC task force agent is not an act of employment by the office of the attorney general.

(b) ICAC task force agents serve solely at the discretion and will of the attorney general and designation as an ICAC task force agent is not a property right to which due process applies.

(6) Designated ICAC task force agents shall have general peace officer powers and the authority to arrest individuals throughout the state for the purpose of investigation of internet crimes committed against children.

(7) The office of the attorney general shall employ such attorneys, investigators and other personnel as necessary to carry out the responsibilities of the ICAC as set forth under this section.

(8) The attorney general shall have the authority to adopt rules necessary to implement the duties and responsibilities assigned to the ICAC under this section.

History.

I.C., § 67-1410, as added by 2013, ch. 245,
§ 2, p. 593.

STATUTORY NOTES

Compiler's Notes.

The abbreviation enclosed in parentheses
so appeared in the law as enacted.

67-1411. Internet crimes against children fund. — (1) There is hereby created in the state treasury the internet crimes against children fund.

(2) The fund shall consist of:

(a) Funds as may be appropriated by the legislature; and

(b) Grants, donations and moneys from other sources.

(3) The fund shall be administered by the office of the attorney general, and moneys in the fund shall be used to fund the internet crimes against children unit as established by section 67-1410, Idaho Code. Moneys in the fund may be allowed to accumulate from year to year and interest earned on the investment of idle moneys in the fund shall be returned to the fund.

(4) Moneys from the fund shall be appropriated by the legislature to the office of the attorney general and such appropriated moneys shall be used for carrying out the provisions of this section and section 67-1410, Idaho Code.

History.

I.C., § 67-1411, as added by 2013, ch. 245,
§ 3, p. 593.

CHAPTER 16

CAPITOL BUILDING AND GROUNDS

SECTION.

67-1602. Idaho state capitol — Allocation and control of space.

67-1605. Law enforcement and security.

67-1607. Organization of the commission.

67-1608. Powers and duties of the commission.

67-1609. Architect of the capitol building.
[Repealed.]

67-1610. Capitol permanent endowment fund.

SECTION.

67-1610A. Capitol maintenance reserve fund.

67-1611. Capitol commission operating fund.

67-1613. Capitol mall and other state property and facilities — Camping prohibited.

67-1613A. Disposition of property.

67-1602. Idaho state capitol — Allocation and control of space. —
The space within the interior of the capitol building shall be allocated and controlled as follows:

(1) Public space. The interior within the rotunda, the hallways on the first and second floors, the restrooms located adjacent thereto, the elevators, the stairways between the first, second, third and fourth floors (excepting the interior stairways between the third and fourth floors within the legislative chambers), shall be space within the capitol building open to the public (“public space”). Subject to this chapter, the director of the department of administration shall maintain all public space.

(2) Executive department. The governor shall determine the use and allocate the space within the second floor. The director of the department of administration shall maintain such space.

(3) Legislative department. The legislative department shall determine the use of the space on the first, third and fourth floors as well as the basement, which basement shall include the underground atrium wings. All space within the first, third and fourth floors and the basement shall be allocated by the presiding officers of the senate and house of representatives. The presiding officers shall maintain such space and provide equipment and furniture thereto, provided however, that the presiding officers may contract with the director of the department of administration to maintain such space and provide equipment and furniture thereto.

History.

I.C., § 67-1602, as added by 1998, ch. 306,
§ 2, p. 1006; am. 2007, ch. 157, § 3, p. 480.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 157, in subsection (3), in the first and second sentence, inserted “first”; and in the first sentence, added “which basement shall include the underground atrium wings.”

Compiler’s Notes.

Section 1 of S.L. 2007, ch. 157 provided
“The Legislature finds that the authority to

develop a Capitol Master Plan rests solely with the Idaho Capitol Commission pursuant to Section 67-1608, Idaho Code. Further, the Capitol Master Plan approved by the Capitol Commission, which includes the restoration of the Capitol Building, construction of single-story atrium wing additions at the east and west ends of the Capitol Building of approximately 25,000 square feet each, and a reconfiguration of space in the Capitol Build-

ing and which provides for the allocation and control of the first floor of the Capitol Building to be by the legislative department, is hereby declared to be reasonable and necessary.”

Section 2 of S.L. 2007, ch. 157 provided “The Legislature hereby approves and authorizes the use of funds for the modified Capitol Master Plan for the restoration and expansion of the Capitol Building that have already been provided through agreements and authorizations from the Idaho Capitol Commission, the Department of Administration and the Idaho State Building Authority pursuant to House Concurrent Resolution No. 47 adopted by the Second Regular Session of the Fifty-eighth Idaho Legislature in 2006. Such funds are hereby authorized for the restoration and refurbishment of the Capitol Build-

ing, the construction of single story atrium wing additions to the east and west ends of the Capitol Building, provisions to allow future connectivity between the Capitol Building atrium wings and other adjoining state facilities in the Capitol Mall and, if there are funds available after the completion of the project herein described, such funds are to be applied to the debt service fund to pay principal and interest on bonds, thereby reducing annual rent in that year.”

Effective Dates.

Section 4 of S.L. 2007, ch. 157 declared an emergency and provided that the act should become effective on and after passage and approval. Became law without the governor’s signature, March 22, 2007.

67-1605. Law enforcement and security. — Responsibility for law enforcement at the capitol building and the supreme court building is vested in the director of the Idaho state police. In coordination with the director of the Idaho state police, Ada County and Boise City are granted jurisdiction to enforce the laws of the state of Idaho and the ordinances of Ada County and Boise City for the capitol building and the supreme court building. The director of the department of administration, or his designee, shall be responsible for security in the capitol building and the supreme court building and has the authority to contract with private contractors to provide security for persons and property in the capitol building and the supreme court building.

History.

I.C., § 67-1605, as added by 1998, ch. 306, § 2, p. 1006; am. 2000, ch. 469, § 133, p. 1450; am. 2008, ch. 85, § 1, p. 222.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 85, added “and the supreme court building” following “capitol building” throughout the section.

67-1607. Organization of the commission. — The commission shall meet not less than two (2) times per year. A majority of the membership of the commission constitutes a quorum to transact business. Public members of the commission shall be reimbursed for actual and necessary expenses as provided in section 59-509(c), Idaho Code. Public members are entitled to reimbursement for reasonable travel expenses incurred in the performance of their duties as a member as provided by law.

History.

I.C., § 67-1607, as added by 1998, ch. 306, § 2, p. 1006; am. 2011, ch. 12, § 1, p. 38.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 12, substituted “two (2) times per year” for “four (4) times per year” in the first sentence and

substituted "59-509(c), Idaho Code" for "59-909(c), Idaho Code" in the second sentence.

67-1608. Powers and duties of the commission. — The commission shall have the following powers and duties:

(1) In consultation with the director of the department of administration, periodically review the capitol building master plan and, as appropriate, amend and modify the plan:

(a) In cooperation with the department of administration, who shall provide administrative support to the commission, prepare, approve and submit each year to the division of financial management and the legislative services office a budget reflecting all proposed expenditures for the commission for the ensuing fiscal year.

(b) The budget provided for in subsection (1)(a) of this section may include, but shall not necessarily be limited to, recommendations for transfers of money made pursuant to section 67-1610(2), Idaho Code, from the capitol permanent endowment fund to the capitol endowment income fund [capitol commission operating fund].

(2) To review all proposals to reconstruct, remodel or restore space within the capitol building. All such projects shall be approved by the commission and be in conformance with the capitol building master plan.

(3) To review all proposals involving objects of art, memorials, statues, or exhibits to be placed on a permanent or temporary basis in public space within the capitol building or on its grounds. All such proposals shall be in conformance with the approved written policies of the commission and implemented with the consent of the commission and consent of the legislature and governor pursuant to subsections (2) and (3) of section 67-1602, Idaho Code.

(4) Work cooperatively with the Idaho state historical society to support a capitol curator to preserve, manage and protect the capitol building, and its historic collections and exhibits. The possession of all historic, restored and new furniture used by the executive department shall be retained by the executive department, and the possession of all historic, restored and new furniture used by the legislative department shall be retained by the presiding officers of the senate and house of representatives. All historic, restored and new furniture shall be inventoried annually, shall remain in the capitol building and is the property of the state of Idaho.

(5) For the purpose of promoting interest in the capitol building and obtaining funds to enhance the preservation of original and historic elements of the capitol building and its grounds, to develop and implement a plan for the publishing and sale of publications on the history of the capitol building and to develop other capitol building memorabilia for sale to the public.

(6) To solicit gifts, grants or donations of any kind from any private or public source to carry out the purposes of this chapter. All gifts, grants or donations received directly by the commission shall be transmitted to the state treasurer who shall credit the same to the capitol endowment fund created by this chapter.

(7) To request necessary assistance from all state agencies and the presiding officers of the senate and house of representatives in performing its duties pursuant to this chapter.

(8) To enter into agreements with tax-exempt nonprofit organizations for the purpose of assisting the commission in the performance of its duties under this chapter, including agreements for the establishment and maintenance of community foundation funds dedicated to the purposes of this chapter.

History.

I.C., § 67-1608, as added by 1998, ch. 306,

§ 2, p. 1006; am. 2007, ch. 41, § 3, p. 101; am. 2011, ch. 12, § 2, p. 38.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 41, substituted “or, during renovation of the capitol building, in temporary space approved by the commission” for “at all times” in the last sentence in subsection (5).

The 2011 amendment, by ch. 12, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler’s Notes.

The bracketed insertion in paragraph (1)(b) was added by the compiler to reflect the 2013 change in the name of the referenced fund. See § 67-1611.

Effective Dates.

Section 4 of S.L. 2007, ch. 41 declared an emergency. Approved March 2, 2007.

67-1609. Architect of the capitol building. [Repealed.]

Repealed by S.L. 2011, ch. 12, § 3, effective July 1, 2011.

History.

I.C., § 67-1609, as added by 1998, ch. 306, § 2, p. 1006.

67-1610. Capitol permanent endowment fund. — (1) There is hereby created a permanent fund within the state treasury to be known as the capitol permanent endowment fund, consisting of, from this point forward: (a) the proceeds of the sale of lands granted to the state of Idaho for the purpose of facilitating the construction, repair, furnishing and improvement of public buildings at its capitol by an Act of Congress (26 Stat. L. 214, ch. 656 (1890) (as amended)) entitled “An Act to Provide for the Admission of the State of Idaho into the Union,” comprising thirty-two thousand (32,000) acres, or any portion thereof, or mineral therein; (b) earnings of the capitol permanent endowment fund; (c) proceeds of the sale of timber growing upon capitol endowment lands; (d) proceeds of leases of capitol buildings endowment lands; (e) proceeds of interest charged upon deferred payments on capitol buildings endowment lands or timber on those lands; (f) all unappropriated and unencumbered moneys in the public building fund shown on the state controller’s chart of accounts as the capitol permanent endowment fund; (g) retained earnings to compensate for the effects of inflation; and (h) legislative appropriations. The fund shall be managed by the endowment fund investment board in accordance with chapter 5, title 68, Idaho Code.

(2) On July 1 of each fiscal year, the endowment fund investment board shall distribute to the capitol maintenance reserve fund created in section

67-1610A, Idaho Code, an amount equal to a percentage approved by the board of the value of the capitol permanent endowment fund that is calculated to provide a stable source of moneys to allow for the maintenance, repair and restoration of the capitol, and to provide for administrative costs incurred managing the assets of the capitol permanent endowment, while still preserving and increasing over time the value of the capitol permanent endowment fund.

History.

I.C., § 67-1610, as added by 1998, ch. 306,
§ 2, p. 1006; am. 2003, ch. 32, § 43, p. 115;

am. 2004, ch. 25, § 1, p. 41; am. 2013, ch. 111,
§ 1, p. 266.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 111, in subsection (2), substituted “capitol maintenance reserve fund created in section 67-1610A” for “capitol endowment income fund created in

section 67-1611” near the beginning and inserted “and to provide for administrative costs incurred managing the assets of the capitol permanent endowment” near the end.

67-1610A. Capitol maintenance reserve fund. — (1) There is hereby created a permanent fund within the state treasury to be known as the capitol maintenance reserve fund.

(2) The fund shall receive distributions from the capitol permanent endowment fund, as provided in section 67-1610, Idaho Code, and shall be managed by the endowment fund investment board in accordance with the provisions of chapter 5, title 68, Idaho Code.

(3) Except as provided for in subsection (4) of this section, all moneys in the capitol maintenance reserve fund shall be used exclusively by the capitol commission to address repair, maintenance and construction needs approved by the commission to benefit the capitol building and its grounds; provided that moneys from the fund shall also be used to pay for administrative costs incurred managing the assets of the capitol permanent endowment including, but not limited to, real property and monetary assets. All expenditures from the capitol maintenance reserve fund shall be subject to appropriation by the legislature.

(4) Upon request of the capitol commission, the endowment fund investment board shall distribute from the capitol maintenance reserve fund to the capitol commission operating fund created in section 67-1611, Idaho Code, an amount determined by the capitol commission to be sufficient to cover the operation, activities and projects of the capitol commission.

History.

I.C., § 67-1610A, as added by 2013, ch. 111,
§ 2, p. 266.

67-1611. Capitol commission operating fund. — (1) There is hereby created in the state treasury the capitol commission operating fund. The fund shall be used to support the operation, activities and projects of the capitol commission, shall be managed by the state treasurer and shall consist of the following:

- (a) Transfers approved by the capitol commission from the capitol maintenance reserve fund for the operation, activities and projects of the capitol commission;
 - (b) All interests earned on the capitol commission operating fund; and
 - (c) All other proceeds either public or private approved by the legislature for the purposes of this act.
- (2) All moneys in the capitol commission operating fund shall be subject to annual appropriation by the legislature. All moneys shall be appropriated exclusively for the purposes of this chapter, retained for future appropriation, or transferred to the capitol endowment permanent fund by legislative appropriation.

History. § 2, p. 1006; am. 2004, ch. 25, § 2, p. 41; am. I.C., § 67-1611, as added by 1998, ch. 306, 2013, ch. 111, § 3, p. 266.

STATUTORY NOTES

Cross References. the name of the fund, formerly the capitol endowment income fund and rewrote the section to the extent that a detailed comparison is impracticable.
Idaho state capitol commission, § 67-1606.

Amendments.
The 2013 amendment, by ch. 111, changed

67-1613. Capitol mall and other state property and facilities — Camping prohibited. — No person shall camp on or in any state-owned or leased property or facility including, but not limited to, the capitol mall, except those that are designated as a recreational camping ground, area or facility. The provisions of this section shall not apply or affect policies, rules, statutes or leases on endowment lands, department of parks and recreation lands or department of fish and game lands. For the purposes of this section, the term “camp” or “camping” means to use as a temporary or permanent place of dwelling, lodging or living accommodation, and which indicia of camping may include, but are not limited to, storing personal belongings, using tents or other temporary structures for storing personal belongings or for sleeping, carrying on cooking activities, laying out bedding or making any fire. Any person who violates the provisions of this section shall be guilty of an infraction. Such persons shall be required to remove all their personal property from the state-owned or leased property.

History.
I.C., § 67-1613, as added by 2012, ch. 17, § 2, p. 36.

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 2012, ch. 17 provided: “Legislative Intent. Whereas, the Capitol Building and the Capitol Mall, as well as other state-owned and leased grounds and facilities, function as the vibrant core of Idaho State Government for Idaho citizens and, as such, require unobstructed grounds and convenient access to ensure the health and safety of all citizens including touring visitors and school children; and, whereas, the state should always strive to maintain the highest aesthetic standards for the grounds of the Capitol Mall, as well as other state-owned and leased grounds and facilities; and, whereas, the Capitol Mall and other state-owned and leased grounds and facilities should have consistent public use guidelines

where appropriate with the local government; the Legislature now finds that it is in the best interest of the public health and safety of Idaho citizens to regulate the use of the grounds of the Capitol Mall and other state-owned and leased grounds and facilities in order to prevent the unauthorized use of these grounds and facilities as a temporary or permanent place for camping, lodging or living accommodations.”

Compiler’s Notes.

Section 4 of S.L. 2012, ch. 17 provided:

67-1613A. Disposition of property. — Any property remaining after issuance of a citation or any property left unattended shall be held by the agency or its agent removing the property in a secure location for a period of not less than ninety (90) days. Notice shall be posted and remain at the nearest reasonable location to the place of removal with the agency’s or agent’s contact information for the ninety (90) day period. If property is not claimed within the ninety (90) day period, the property shall be deemed abandoned and the agency shall have the right to dispose of the property. A reasonable storage fee as determined by the agency may be assessed at the time an owner claims the property. The individual claiming the property shall produce identification and shall sign a release form providing his or her name and contact information and swearing that the property belongs to the claiming party. If the provisions of this section are complied with, the state of Idaho, its agents, employees and contractors shall be immune from legal liability for the administration of this section.

History.

I.C., § 67-1613A, as added by 2012, ch. 17, § 3, p. 36.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2012, ch. 17 provided: “Legislative Intent. Whereas, the Capitol Building and the Capitol Mall, as well as other state-owned and leased grounds and facilities, function as the vibrant core of Idaho State Government for Idaho citizens and, as such, require unobstructed grounds and convenient access to ensure the health and safety of all citizens including touring visitors and school children; and, whereas, the state should always strive to maintain the highest aesthetic standards for the grounds of the Capitol Mall, as well as other state-owned and leased grounds and facilities; and, whereas, the Capitol Mall and other state-owned and leased grounds and facilities should have consistent public use guidelines where appropriate with the local government; the Legislature now finds that it is in the best interest of the public health and safety of

“Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 5 of S.L. 2012, ch. 17 declared an emergency. Approved February 21, 2012.

Idaho citizens to regulate the use of the grounds of the Capitol Mall and other state-owned and leased grounds and facilities in order to prevent the unauthorized use of these grounds and facilities as a temporary or permanent place for camping, lodging or living accommodations.”

Compiler’s Notes.

Section 4 of S.L. 2012, ch. 17 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 5 of S.L. 2012, ch. 17 declared an emergency. Approved February 21, 2012.

CHAPTER 18

IDAHO MILLENNIUM FUND

67-1801. Idaho millennium permanent endowment fund.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1802. Distribution from the Idaho millennium permanent endowment fund.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1803. Idaho millennium fund.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1804. Distribution from the Idaho millennium fund.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1805. Idaho millennium fund balance limitation.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1806. Idaho millennium income fund.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1807. Joint millennium fund committee — Creation and appointment of members.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1808. Powers and duties of the committee.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

67-1809. Support and staff for the committee.

STATUTORY NOTES

Compiler's Notes.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "SECTION 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"SECTION 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of

the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund."

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

CHAPTER 19

STATE PLANNING AND COORDINATION

SECTION.

67-1903. Strategic planning.

SECTION.

67-1904. Performance measurement.

67-1903. Strategic planning. — (1) Each state agency shall develop and submit to the division of financial management in an electronic format a comprehensive strategic plan for the major divisions and core functions of that agency. The plan shall be based upon the agency's statutory authority and, at a minimum, shall contain:

- (a) A comprehensive outcome-based vision or mission statement covering major divisions and core functions of the agency;
- (b) Goals for the major divisions and core functions of the agency;
- (c) Objectives and/or tasks that indicate how the goals are to be achieved;
- (d) Performance measures, developed in accordance with section 67-1904, Idaho Code, that assess the progress of the agency in meeting its goals in the strategic plan, along with an indication of how the performance measures are related to the goals in the strategic plan;
- (e) Benchmarks or performance targets for each performance measure for, at a minimum, the next fiscal year, along with an explanation of the manner in which the benchmark or target level was established; and
- (f) An identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the strategic plan goals and objectives.

(2) The strategic plan shall cover a period of not less than four (4) years forward including the fiscal year in which it is submitted, and shall be updated annually.

(3) The strategic plan shall serve as the foundation for developing the annual performance information required by section 67-1904, Idaho Code.

(4) When developing a strategic plan, an agency shall consult with the appropriate members of the legislature, and shall solicit and consider the views and suggestions of those persons and entities potentially affected by

the plan. Consultation with legislators may occur when meeting the requirement of section 67-1904(7), Idaho Code.

(5) Strategic plans are public records and are available to the public as provided in section 9-338, Idaho Code.

(6) Each agency, department and commission shall seek to minimize the number of printed copies of strategic plans and annual reports by using electronic versions whenever possible, and by printing only a limited number sufficient for internal needs or anticipated requests for copies for which electronic versions are otherwise inadequate.

History.

I.C., § 67-1903, as added by 2005, ch. 339,
§ 4, p. 1057; am. 2012, ch. 205, § 1, p. 545.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 205, inserted in the introductory paragraph in subsection (1) and added subsection (6).
“in an electronic format” in the first sentence

67-1904. Performance measurement. — (1) Every fiscal year, as part of its budget request, each agency shall prepare an annual performance report. The report shall be comprised of two (2) parts:

(a) Part I shall contain basic profile information for the prior four (4) fiscal years including statutory authority, fiscal year revenue and expenditure information and any informative breakdowns such as amounts from different revenue sources, types of expenditures, and data about the number and types of cases managed and/or key services provided to meet agency goals.

(b) Part II shall contain:

(i) Not more than ten (10) key quantifiable performance measures, which clearly capture the agency's progress in meeting the goals of its major divisions and core functions stated in the strategic plan required in section 67-1903, Idaho Code. The goal(s) and strategies to which each measure corresponds shall also be provided. More measures may be requested by the germane committee chairs through the process set forth in subsection (7) of this section.

(ii) Results for each measure for the prior four (4) fiscal years. In situations where past data is not available because a new measure is being used, the report shall indicate the situation.

(iii) Benchmarks or performance targets for each measure for, at a minimum, the next fiscal year, and for each year of the four (4) years of reported actual results.

(iv) Explanations, where needed, which provide context important for understanding the measures and the results, and any other qualitative information useful for understanding agency performance.

(v) Attestation from the agency director that the data reported has been internally assessed for accuracy, and, to the best of the director's knowledge, is deemed to be accurate.

(2) Each agency performance report shall be presented in a consistent

format, determined by the division of financial management, which allows for easy review and understanding of the information reported.

(3) Each agency shall review the results of the performance measures compared to benchmarks or performance targets and shall use the information for internal management purposes.

(4) Each agency shall maintain reports and documentation that support the data reported through the performance measures. This information shall be maintained and kept readily available for each of the four (4) years covered in the most recent performance report.

(5) The performance report shall be submitted by the agency to the division of financial management and the budget and policy analysis office of the office of legislative services by September 1 of each year. In fiscal year 2006, agencies shall submit part I of the performance report required by subsection (1)(a) of this section no later than November 1, and are exempt from submitting part II of the performance report required by subsection (1)(b) of this section. In accordance with section 67-3507, Idaho Code, agency performance reports shall be published each year as part of the executive budget document.

(6) The office of budget and policy analysis of the office of legislative services may incorporate all or some of the information submitted under this section in its annual legislative budget book.

(7) Each agency shall orally present the information from the performance report to its corresponding senate and house of representatives germane committees each year unless a germane committee elects to have an agency present such information every other year. The presentations shall consist of a review of agency performance information and shall provide an opportunity for dialogue between the agency and the committees about the sufficiency and usefulness of the types of information reported. Following any discussion about the information reported, the germane committees, in accordance with the requirements of this section, may request any changes to be made to the types of information reported. In fiscal year 2006, each agency shall be required only to present part I of the performance report required in subsection (1)(a) of this section and, at a minimum, a progress report on the implementation of part II of the performance report as set forth in subsection (1)(b) of this section.

(8) If an agency and its corresponding germane committees determine that it is not feasible to develop a quantifiable measure for a particular goal or strategy, the germane committees may request an alternative form of measurement.

(9) The senate and the house of representatives germane committees should attempt to meet jointly to hear and discuss an agency's performance report and achieve consensus regarding the types of measures to be reported.

(10) Any performance report or document required by this section shall be produced electronically and transmitted to the division of financial management and the legislative services office electronically. Additionally, the agency shall have the performance report or document required by this section available on its website so that the public may access it. Each agency,

department and commission shall seek to minimize the number of printed copies of strategic plans and annual reports by using electronic versions whenever possible, and by printing only a limited number sufficient for internal needs or anticipated requests for copies for which electronic versions are otherwise inadequate.

History.

I.C., § 67-1904, as added by 2005, ch. 339,
§ 5, p. 1057; am. 2012, ch. 205, § 2, p. 545.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 205, added
subsection (10).

CHAPTER 20**STATE BOARD OF EXAMINERS****SECTION.**

67-2002. Meetings of board — Claims.
67-2027. Board to provide for audits. [Re-
pealed.]

SECTION.

67-2028. Law enforcement death benefits.
[Repealed.]

67-2002. Meetings of board — Claims. — The state board of examiners shall have regular meetings not less frequently than monthly, and may hold such adjourned or special meetings as the chairman may direct and may meet at any time on call of the chairman or a majority of the board. No claim shall be examined and passed upon by any member unless a majority of the board is present.

History.

1890-1891, p. 45, § 2; reen. 1899, p. 24, § 2;
reen. R.C., § 145; am. 1913, ch. 15, § 2, p. 55;
reen. C.L. 11:2; C.S., § 231; am. 1925, ch. 121,

§ 1, p. 168; I.C.A., § 65-2002; am. 1976, ch.
42, § 26, p. 90; am. 1986, ch. 321, § 1, p. 788;
am. 2007, ch. 335, § 1, p. 984.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 335, in the section catchline, substituted “Meetings” for “Sessions”; and substituted the first sentence for the former first two sentences, which read:

“Regular sessions of the state board of examiners shall be held on the second Tuesday of each month. Other sessions may be held at such time and place, and upon such notice, as the board may by resolution prescribe.”

67-2027. Board to provide for audits. [Repealed.]

Repealed by S.L. 2013, ch. 212, § 1, effective July 1, 2013.

History.

I.C., § 67-2027, as added by 1994, ch. 181,
§ 39, p. 575.

67-2028. Law enforcement death benefits. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 67-2028, as added by 2001, ch. 318, § 1, p. 1130;

am. 2003, ch. 238, § 2, p. 614, was repealed by S.L. 2003, ch. 238, § 3, effective July 1, 2008.

CHAPTER 23**MISCELLANEOUS PROVISIONS****SECTION.**

67-2303. Display of POW/MIA flag.

67-2303A. Flags — Proper protocol.

67-2310. Subcontractors to be listed on bid of general contractor — Exceptions.

67-2319. Purchasing products of rehabilitation facilities.

67-2323. Written agreement before transfer — Publication of notice.

67-2343. Notice of meetings — Agendas.

SECTION.

67-2344. Written minutes of meetings.

67-2345. Executive sessions — When authorized.

67-2347. Violations.

67-2351. Short title.

67-2352. Definitions.

67-2353. City or county request for advice.

67-2354. Department responsibilities.

67-2355. Consideration of application — Local regulation.

67-2303. Display of POW/MIA flag. — The POW/MIA flag may be displayed on any day when the United States flag is displayed and in accordance with rules as promulgated by the division of veterans services pursuant to the provisions of section 67-2303A, Idaho Code.

History.

I.C., § 67-2303, as added by 2011, ch. 209, § 1, p. 590; am. 2012, ch. 199, § 1, p. 534.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 199, deleted the designations from this section, deleted “or in front of the locations prescribed in subsection (2) of this section” following “may be displayed on” and substituted “and in accordance with rules as promulgated by the division of veterans services pursuant to the

provisions of section 67-2303A, Idaho Code” for former subsection (2) which enumerated specific locations for flying POW/MIA flags.

Effective Dates.

S.L. 2011, chapter 209 became law without the signature of the governor, effective July 1, 2011.

67-2303A. Flags — Proper protocol. — The division of veterans services is hereby authorized to promulgate rules directing the proper protocol for the location and display of flags flown on state property.

History.

I.C., § 67-2303A, as added by 2012, ch. 199, § 2, p. 534.

67-2310. Subcontractors to be listed on bid of general contractor — Exceptions. — (1) Hereafter, before the state of Idaho, the separate counties, cities, towns, villages or school districts within the state of Idaho shall let contracts for the construction, alteration or repair of any and all

buildings, improvements or public works, and such construction, alteration or repair requires plumbing, HVAC work, or electrical work, the general contractor shall be required to include in his bid the name, or names and address, or addresses, of the subcontractors who shall, in the event the contractor secures the contract, subcontract the plumbing, HVAC work, and electrical work under the general contract. In the event that the general contractor intends to self-perform the plumbing, HVAC or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work. The general contractor shall demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC or electrical work to be self-performed by the general contractor on the bid form.

(2) No general contractor shall name any subcontractor in his bid unless the general contractor has received communication from the subcontractor. For the purposes of this section, "communication" shall include telephone, mail, facsimile machine, in person, or by computer using the internet or a bid service.

(3) In the event a general contractor secures the contract, and if the general contractor and a named subcontractor cannot finalize the terms of agreement between them for any reason other than cost, the general contractor shall name another subcontractor by written notification within ten (10) days of being awarded the public works contract. The general contractor shall disclose to the public entity the cost for work to be performed by the substitute subcontractor. If the amount of the substitute subcontractor's bid is less than the original subcontractor's bid, the reduction in cost shall be passed through to the benefit of the public entity which awarded the contract.

(4) This act shall not apply to the construction, alteration or repair of public buildings under the jurisdiction of the board of regents of the university of Idaho.

(5) This act shall have no application to the preparation and submission of plans and specifications pursuant to statute or local ordinance.

(6) Failure to name subcontractors or list the valid contractor's license number for plumbing, HVAC or electrical work being self-performed by the general contractor as required by subsection (1) of this section shall render any bid submitted by a general contractor unresponsive and void.

(7) At the time subcontractors are named in accordance with the provisions of this section, they must possess the appropriate licenses or certificates of competency issued by the state of Idaho covering the contractor work classification in which each respective subcontractor is named. The provisions of this subsection (7) shall not apply in those cases where the public works contract is financed in whole or in part by federal aid funds, provided that, at or prior to the award and execution of any such contract by the state of Idaho or any other contracting authority mentioned in subsection (1) of this section, the successful bidder has secured a license as provided in this chapter.

History.

I.C., § 67-2310, as added by 1953, ch. 124, § 1, p. 195; am. 1963, ch. 16, § 1, p. 150; am.

1999, ch. 167, § 1, p. 454; am. 2007, ch. 127, § 3, p. 382; am. 2010, ch. 218, § 1, p. 491.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 127, in subsection (1), twice substituted "HVAC work" for "heating and air conditioning work," and added the last two sentences; and in subsection (6), inserted "or list the valid contractor's

license number for plumbing, HVAC or electrical work being self-performed by the general contractor" and "by subsection (1)."

The 2010 amendment, by ch. 218, added the last sentence in subsection (7).

67-2319. Purchasing products of rehabilitation facilities. — Products which are manufactured by and services which are provided for nonprofit corporations and public agencies operating rehabilitation facilities serving people with disabilities and disadvantaged people and offered for sale at the fair market price as determined by the administrator of the division of purchasing which meet the specific requirement for such products may be procured by the state agencies or departments or any political subdivision of the state from such nonprofit corporations or public agencies without advertising or calling for bids.

History.

I.C., § 67-2319, as added by 1973, ch. 291, § 2, p. 614; am. 2010, ch. 235, § 60, p. 542.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 235, substituted "serving people with disabilities and

disadvantaged people" for "serving the handicapped and disadvantaged."

67-2323. Written agreement before transfer — Publication of notice. — Prior to any such conveyance or transfer, a written agreement shall be made between units of government or districts for a conveyance or transfer of real or personal property from one to the other with or without consideration.

Notice of the general terms of the agreement shall be given by publication in at least two (2) issues in a newspaper printed or of general circulation in the county or counties in which such respective units are located and having general circulation within such county or counties. Said notice shall give time and place of the next regular or special meeting of each respective unit at which time the governing board of such units propose to ratify such an agreement. The first publication shall be made not less than twelve (12) days prior to each meeting, and the last publication of notice shall be made not less than five (5) days prior to each meeting.

History.

1967, ch. 142, § 2, p. 325; am. 2009, ch. 278, § 1, p. 840.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 278, in the last paragraph, in the first sentence, substituted “shall be given by publication in at least

two (2) issues” for “shall be published for two (2) consecutive weeks” and added the last sentence.

67-2326. Joint action by public agencies — Purpose.

OPINIONS OF ATTORNEY GENERAL

An agreement for the joint exercise of powers between an Idaho municipality and a

private entity is prohibited by Idaho law. OAG 08-02.

67-2327. Definitions.

OPINIONS OF ATTORNEY GENERAL

For the same reason that the a city lacks the authority to delegate its police power to a private entity, the Peace Officer Standards and Training (POST) Council does not have

the authority under this section, to recognize a joint exercise of powers agreement between a city and certify officers acting under that agreement. OAG 08-02.

67-2337. Extraterritorial authority of peace officers.

JUDICIAL DECISIONS

Fresh Pursuit.

The only evidence necessary to show fresh pursuit is that the officer had knowledge that a crime or infraction was committed within his jurisdiction and that the officer pursued the suspect beyond the jurisdiction with the purpose of making an arrest, citing the sus-

pect, or investigating the offense. Whether the officer's lights are flashing and siren is blaring is objective evidence of the officer's pursuit, but it is not necessary. It is well within an officer's discretion to wait for a safe point to stop a vehicle. *State v. Scott*, 150 Idaho 123, 244 P.3d 622 (Ct. App. 2010).

67-2341. Open public meetings — Definitions.

JUDICIAL DECISIONS

ANALYSIS

Lawsuit.

Meeting.

Open meeting.

Lawsuit.

City manager had no authority to make the decision to file a lawsuit because that was a decision that had to be made by the city council in accordance with the requirements of the open meeting laws. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).

Meeting.

Crop residue disposal program was not a subagency of the Idaho state department of agriculture (ISDA) within the meaning of the Open Meetings Act (Act), this section, and the ISDA employees who worked in that program were not a governing body as defined by the

act; therefore, the Act did not apply to Idaho crop residue end-of-year meeting. *Safe Air for Everyone v. Idaho State Dep't of Agric.*, 145 Idaho 164, 177 P.3d 378 (2008).

Open Meeting.

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners' visit to the site of the proposed subdivision was conducted in violation of provision of Idaho's open meeting laws, including §§ 67-2342, 31-710 and this section. While proper notice of the public hearing/site visit was provided, the

board acted in bad faith by intentionally avoiding a group that was gathered near the entrance to the site location and precluding

interested parties from actually attending. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

67-2342. Governing bodies — Requirement for open public meetings.

JUDICIAL DECISIONS

ANALYSIS

Authority of governing board.
Open meeting requirement.

Authority of Governing Board.

The decision to file a lawsuit is not a ministerial or administrative decision but is a policy decision that must be made by the governing board pursuant to the open meeting laws, and the city manager is appointed by the city council as the administrative head of the city government under the direction and supervision of such council, not as the city's policymaker. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).

site of the proposed subdivision was conducted in violation of provision of Idaho's open meeting laws, including §§ 67-2341, 31-710 and this section. While proper notice of the public hearing/site visit was provided, the board acted in bad faith by intentionally avoiding a group that was gathered near the entrance to the site location and precluding interested parties from actually attending. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

Open Meeting Requirement.

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners' visit to the

Cited in: *Safe Air for Everyone v. Idaho State Dep't of Agric.*, 145 Idaho 164, 177 P.3d 378 (2008); *Leavitt v. Craven*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 141 (June 8, 2012).

67-2343. Notice of meetings — Agendas. — (1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a

twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

History.

1974, ch. 187, § 4, p. 1492; am. 1992, ch. 155, § 3, p. 506; am. 2009, ch. 161, § 1, p. 483.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 161, in the section catchline, added "agendas"; in subsection (1), in the first sentence, inserted "and a forty-eight (48) hour agenda notice," and deleted the former third sentence, which read: "A forty-eight (48) hour agenda notice shall be required in advance of each regular meeting,

however, additional agenda items may be added after completion of the agenda up to and including the hour of the meeting, provided that a good faith effort is made to include in the notice all agenda items known at the time to be probable items of discussion"; and added subsection (4).

67-2344. Written minutes of meetings. — (1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes pertaining to executive sessions. Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail

to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

History.

1974, ch. 187, § 5, p. 1492; am. 1977, ch. 173, § 2, p. 445; am. 2007, ch. 174, § 1, p. 517; am. 2009, ch. 161, § 2, p. 483.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 174, rewrote subsection (2), which formerly read: "Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section 67-2345, Idaho Code, but shall contain sufficient detail to convey the general tenor of the meeting."

The 2009 amendment, by ch. 161, rewrote

subsection (2), which formerly read: "Minutes of executive sessions shall be limited to a specific reference to the statutory subsection authorizing the executive session and sufficient detail to convey the general subject matter but shall not contain information sufficient to compromise the purpose of going into executive session."

JUDICIAL DECISIONS

Audio Recording.

Common, ordinary meaning of the term "written" refers to words or symbols recorded in visual form, and an audio recording is not a "written" record as that term is commonly understood; therefore, the open meeting re-

quirements were violated by county commissioners in a closed session with a city councilman because the recordation requirements were not met where only an audio recording of votes was made. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).

67-2345. Executive sessions — When authorized. — (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;
- (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or contro-

versies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

History.

1974, ch. 187, § 6, p. 1492; am. 1976, ch. 124, § 1, p. 473; am. 1977, ch. 173, § 3, p. 445; am. 1978, ch. 302, § 1, p. 759; am. 1986, ch. 59, § 2, p. 167; am. 1990, ch. 213, § 92, p.

480; am. 1998, ch. 411, § 5, p. 1275; am. 2003, ch. 164, § 3, p. 462; am. 2007, ch. 174, § 2, p. 517; am. 2009, ch. 161, § 3, p. 483; am. 2011, ch. 311, § 26, p. 882.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 174, in the introductory paragraph in subsection (1), substituted "identified the authorization by specific reference to (1) or more of paragraphs (a) through (j) of this subsection" for "identified the authorization under this act"; rewrote subsection (1)(f), which formerly read: "To consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation"; and added subsection (1)(j).

The 2009 amendment, by ch. 161, rewrote the section, revising provisions relating to executive sessions, adding subsection (3) and redesignating former subsection (3) as subsection (4).

The 2011 amendment, by ch. 311, deleted former paragraph (1)(h), which read: "By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code" and redesignated former paragraphs (1)(i) and (1)(j) as present paragraphs (1)(h) and (1)(i).

JUDICIAL DECISIONS

ANALYSIS

Closed session.

Legal counsel.

Recordation of votes.

Closed Session.

Commission of pardons and parole was not

required to grant petitioner a full, open session hearing regarding his commutation peti-

tion. *Leavitt v. Craven*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 141 (June 8, 2012).

Legal Counsel.

Executive session may be held: (1) to consider, and advise its legal representatives in, pending litigation; or (2) where there is a general public awareness of probable litigation; the Idaho legislature chose to rely on a “general public awareness” requirement rather than an attorney presence requirement to perform the gatekeeping function in such cases. Therefore, county commissioners were not required to have legal counsel present in a case where there was a general public awareness of probable litigation in a closed meeting between the commissioners and a city councilman regarding tension between the two entities, and whether the state of the

meeting qualified under paragraph (1)(f) was a disputed issue of fact not properly disposed of by a motion for judgment on the pleadings. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).

Recordation of Votes.

Common, ordinary meaning of the term “written” refers to words or symbols recorded in visual form, and an audio recording is not a “written” record as that term is commonly understood; therefore, the open meeting requirements were violated by county commissioners in a closed session with a city councilman because the recordation requirements were not met where only an audio recording of votes was made. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).

OPINIONS OF ATTORNEY GENERAL

Subdivision (1)(a) of this section (“the Hiring Exception”) should be construed to apply only to the narrow situation in which a specific candidate is being considered for a specific position. OAG 08-03.

The executive session exceptions in this section should be interpreted narrowly in order to fulfill the broad public purpose of allowing citizens to observe their govern-

ments at work, as provided by the Idaho Open Meetings Act. OAG 08-03.

Corrective action should be taken immediately upon recognition that an executive session has “drifted” from its stated purpose and governing bodies should implement an oversight mechanism to assist in preventing and recognizing “drift.” OAG 08-03.

67-2347. Violations. — (1) If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50.00).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commis-

sioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7)(a) A violation may be cured by a public agency upon:

- (i) The agency's self-recognition of a violation; or
- (ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

History.

I.C., § 67-2347, as added by 1977, ch. 173, § 5, p. 445; am. 1992, ch. 155, § 4, p. 506; am. 2009, ch. 161, § 4, p. 483.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 161, in subsection (2), deleted "knowingly" preceding "conducts or participates," substituted "a civil

penalty not to exceed fifty dollars (\$50.00)" for "a fine not to exceed one hundred fifty dollars (\$150)," and deleted "for a first violation and not to exceed three hundred dollars (\$300) for each subsequent violation as a civil penalty" from the end; added subsections (3) and (4) and redesignated the subsequent subsections

accordingly; in the next-to-last sentence in subsection (6), substituted "time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act" for "time of the violation or alleged violation of the provisions of this act"; and added subsection (7).

JUDICIAL DECISIONS

ANALYSIS

Knowledge.

Ratification of unauthorized act by city manager.

Knowledge.

This section specifies that an individual must act "knowingly," so a participant must be aware that a meeting violated the open meeting law; knowledge of a violation may be inferred, but it is a prerequisite to liability. Therefore, judgment on the pleadings was inappropriate in a case where county commissioners contended that they did not know of a violation that occurred during a closed session with a city councilman. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).

Ratification of Unauthorized Act by City Manager.

Fact that a city manager did not have authority to authorize the commencement of a lawsuit did not require dismissal where the city council later ratified that action in a meeting that complied with the open meeting laws, because there was nothing in the open meeting laws that would prevent a governing board from later ratifying an unauthorized act by its agent. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).

67-2351. Short title. — This act shall be known and may be cited as the "Energy Facility Site Advisory Act."

History.

I.C., § 67-2351, as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Compiler's Notes.

The words "this act" mean S.L. 2007, ch.

164, which is codified as §§ 67-2351 to 67-2355.

67-2352. Definitions. — As used in this act, the following definitions shall apply:

(1) "Department" means any department of state government as defined in section 67-2402, Idaho Code.

(2) "Energy facility" means any electrical generating facility with a rated capacity at location and at fifty-nine (59) degrees of more than fifty (50) megawatts regardless of fuel source.

History.

I.C., § 67-2352, as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Compiler's Notes.

The words "this act" mean S.L. 2007, ch.

164, which is codified as §§ 67-2351 to 67-2355.

67-2353. City or county request for advice. — (1) In the event that a city or county has before it a matter in which it considers a permit to construct and operate an energy facility that will be used for the generation of electricity, the city or county may request assistance in the evaluation of the environmental attributes and impacts of the operation of the facility from any department of state government as provided in this act. The request to a department for assistance shall specify the scope of the requested assistance, shall request a written response to the request and shall include the information provided to the city or county by the applicant that relates to the request for assistance.

(2) In addition to such other information as the ordinances of the city or county may require, a city or county may require an applicant for the construction of an energy facility to submit preliminary air emission and preliminary water consumption data concerning the proposed energy facility based on the design of the facility.

(3) If a city or county requests assistance from more than one (1) department, the city or county may designate one of the departments to coordinate the reporting by all departments pursuant to this act.

History.

I.C., § 67-2353, as added by 2007, ch. 164,
§ 1, p. 490.

STATUTORY NOTES

Compiler's Notes.

The words "this act" mean S.L. 2007, ch. 164, which is codified as §§ 67-2351 to 67-2355.

67-2354. Department responsibilities. — (1) Upon receiving a request for assistance from a city or county, the department receiving the request shall review the information provided to the department by the city or county. The department may make such investigations as it considers necessary to respond to the request for advice. Within sixty (60) days of receiving a request for assistance, the department shall issue a written report to the city or county that made the request. If a city or county requests assistance from more than one (1) department, all departments to which a request is made shall cooperate with the department designated by the city or county to coordinate the activities of all departments in performing their reporting obligation.

(2) A department that has received a request for assistance pursuant to this act shall cause a qualified employee of the department to appear at a hearing on the application held pursuant to section 67-2355(3), Idaho Code, upon the request of the city or county that requested the assistance.

(3) Compliance with this act shall not preempt or otherwise affect the duties of the department under state law.

History.

I.C., § 67-2354, as added by 2007, ch. 164,
§ 1, p. 490.

STATUTORY NOTES

Compiler's Notes.

The words "this act" mean S.L. 2007, ch.

164, which is codified as §§ 67-2351 to 67-2355.

67-2355. Consideration of application — Local regulation. —

(1) The city or county shall consider an application for the construction of an energy facility under its existing ordinances except as otherwise provided in this section.

(2) In considering an application for the construction of an energy facility, the city or county may not consider the following factors or attributes of an energy facility because the factors are the responsibility of the public utilities commission, an electric cooperative governing board or a city council overseeing a municipal electric system:

(a) The need for or use of the energy by the applicant or by one (1) or more electric utilities or purchasers of the energy;

(b) The resource plan or financial characteristics of an electric utility or purchaser of the energy; or

(c) Alternative resource options or alternative energy facility sites that were considered by the applicant or utility owner or purchaser, or that may be or were available or should have been considered for comparative purposes.

(3) The city or county shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed energy facility before the approval of the facility. Several sites may be considered at any one (1) public hearing. A representative of the state department or departments that have provided written reports shall appear at the hearing at the request of the city or county. Members of the public who are not residents of the city or county may provide comments at the hearing. The city or county, when deciding whether to approve the application, shall duly consider all comments. The city or county may approve or disapprove the application regardless of the written advice by a state department. A hearing held pursuant to the existing ordinances of the city or county that meets all of the requirements of this subsection is held in compliance with this subsection.

History.

I.C., § 67-2355, as added by 2007, ch. 164,
§ 1, p. 490.

CHAPTER 24

CIVIL STATE DEPARTMENTS — ORGANIZATION

SECTION.

67-2402. Structure of the executive branch of
Idaho state government.

SECTION.

67-2406. Directors of departments enumerated.
ated.

67-2402. Structure of the executive branch of Idaho state government. — (1) Pursuant to section 20, article IV, Idaho constitution, all executive and administrative offices, agencies, and instrumentalities of the executive department of state, except for those assigned to the elected

constitutional officers, are allocated among and within the following departments:

- Department of administration
- Department of agriculture
- Department of commerce
- Department of labor
- Department of correction
- Department of environmental quality
- Department of finance
- Department of fish and game
- Department of health and welfare
- Department of insurance
- Department of juvenile corrections
- Idaho transportation department
- Industrial commission
- Department of lands
- Idaho state police
- Department of parks and recreation
- Department of revenue and taxation
- Department of self-governing agencies
- Department of water resources
- State board of education

The public school districts of Idaho, having condemnation authority, shall be considered civil departments of state government for the purpose of and limited to the purchase of state endowment land at appraised prices.

(2) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction each heads a constitutional office.

(3) For its internal structure, unless specifically provided otherwise, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator. The administrator of any division shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor.

History.

1919, ch. 8, § 2, p. 43; C.S., § 251; am. 1921, ch. 104, § 2, p. 233; I.C.A., § 65-2302; am. 1939, ch. 37, § 11, p. 74; am. 1941, ch. 82, § 1, p. 151; am. 1947, ch. 59, § 1, p. 82; am. 1947, ch. 238, § 1, p. 587; am. 1969, ch. 466, § 10, p. 1326; am. 1972, ch. 196, § 17, p. 483; am. 1974, ch. 40, § 2, p. 1072; am. 1975, ch.

164, § 13, p. 434; am. 1978, ch. 242, § 1, p. 519; am. 1985, ch. 160, § 2, p. 426; am. 1994, ch. 180, § 196, p. 420; am. 1995, ch. 44, § 59, p. 65; am. 1995, ch. 365, § 2, p. 1276; am. 1996, ch. 421, § 4, p. 1406; am. 2000, ch. 132, § 1, p. 309; am. 2000, ch. 469, § 1, p. 1450; am. 2004, ch. 346, § 9, p. 1029; am. 2007, ch. 360, § 26, p. 1061.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, in subsection (1), deleted “and labor” following “de-

partment of commerce,” and added “Department of labor.”

67-2406. Directors of departments enumerated. — The following department directors are created:

Director, department of administration
 Director, department of agriculture
 Director, department of commerce
 Director, department of labor
 Director, department of correction
 Director, department of finance
 Director, department of fish and game
 Director, department of environmental quality
 Director, department of health and welfare
 Director, department of insurance
 Director, department of juvenile corrections
 Director, Idaho transportation department
 Director, department of lands
 Director, Idaho state police
 Director, department of parks and recreation
 Director, department of water resources.

History.

I.C., § 67-2406, as added by 1974, ch. 40, § 6, p. 1072; am. 1985, ch. 160, § 3, p. 426; am. 1995, ch. 44, § 60, p. 65; am. 1996, ch.

421, § 5, p. 1406; am. 2000, ch. 132, § 2, p. 309; am. 2000, ch. 469, § 2, p. 1450; am. 2004, ch. 346, § 10, p. 1029; am. 2007, ch. 360, § 27, p. 1061.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, deleted “and labor” following “department of com-

merce,” and added “Director, department of labor.”

CHAPTER 25

CIVIL STATE DEPARTMENTS — CONDUCT

67-2504. Employees.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2013, ch. 162 provided: “Employee Compensation. The Legislature finds that investing in state employee compensation should remain a high priority even in tough economic times, and therefore strongly encourages agency directors, institution executives and the Division of Financial Management to approve the use of salary savings to provide either one-time or ongoing

merit increases for deserving employees, and also target employees who are below policy compensation. Such salary savings could result from turnover and attrition, or be the result of innovation and reorganization efforts that create savings. Such savings should be reinvested in employees. Agencies are cautioned to use one-time funding for one-time payments and ongoing funding for permanent pay increases.”

CHAPTER 26

DEPARTMENT OF SELF-GOVERNING AGENCIES

SECTION.

67-2601. Department created — Organization — Director — Bureau of occupational licenses created.
 67-2601A. Division of building safety.
 67-2602. Bureau of occupational licenses.
 67-2608. Bureau chief to cooperate with other agencies.

SECTION.

67-2609. Registration of occupations.
 67-2620. Military education training and service — Qualifications for licensure, certification or registration.

67-2601. Department created — Organization — Director — Bureau of occupational licenses created. — (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code; and the Idaho alfalfa and clover seed commission, as provided in chapter 42, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturistry, as provided by chapter 33, title 54, Idaho Code; Idaho board of licensure of professional engineers and professional land surveyors, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board, as provided by chapter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of

landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code; the certified shorthand reporters board, as provided by chapter 31, title 54, Idaho Code; the driving businesses licensure board, as provided by chapter 54, title 54, Idaho Code; the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code; and the board of midwifery, as provided by chapter 55, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; manufactured housing board, chapter 21, title 44, Idaho Code; electrical board, chapter 10, title 54, Idaho Code; public works contractors license board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code; and modular building advisory board, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(f) The board of library commissioners, pursuant to section 33-2502, Idaho Code.

(g) The Idaho state historical society, pursuant to section 67-4123, Idaho Code.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

History.

I.C., § 67-2601, as added by 1974, ch. 13, § 2, p. 138; am. 1976, ch. 213, § 2, p. 776; am. 1982, ch. 183, § 2, p. 480; am. 1994, ch. 15, § 1, p. 28; am. 1995, ch. 44, § 61, p. 65; am. 1996, ch. 421, § 6, p. 1406; am. 2000, ch. 59, § 8, p. 125; am. 2000, ch. 82, § 2, p. 170; am. 2000, ch. 274, § 152, p. 799; am. 2000, ch. 438, § 2, p. 1396; am. 2001, ch. 150, § 1, p. 544; am. 2002, ch. 111, § 2, p. 310; am. 2003, ch. 201, § 18, p. 529; am. 2004, ch. 313, § 7, p. 878; am. 2004, ch. 335, § 3, p. 995; am. 2004,

ch. 350, § 2, p. 1042; am. 2005, ch. 143, § 2, p. 441; am. 2005, ch. 277, § 3, p. 852; am. 2005, ch. 329, § 3, p. 1026; am. 2006, ch. 16, § 26, p. 42; am. 2006, ch. 79, § 10, p. 238; am. 2006, ch. 116, § 22, p. 315; am. 2007, ch. 162, § 1, p. 485; am. 2007, ch. 252, § 15, p. 737; am. 2008, ch. 27, § 17, p. 56; am. 2009, ch. 65, § 2, p. 177; am. 2009, ch. 167, § 1, p. 497; am. 2009, ch. 178, § 1, p. 575; am. 2009, ch. 251, § 3, p. 765; am. 2010, ch. 79, § 36, p. 133; am. 2011, ch. 151, § 29, p. 414; am. 2011, ch. 181, § 4, p. 513.

STATUTORY NOTES**Amendments.**

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 162, in subsection (2)(a), deleted "Idaho prune commission, as provided by chapter 30, title 22, Idaho Code" from the list of commissions; and rewrote subsection (2)(d), revising provisions relating to the powers and duties of the division of building safety.

The 2007 amendment, by ch. 252, inserted "the Idaho building code act; chapter 43, title 39, Idaho Code, relating to" near the beginning in subsection (2)(d)(i).

The 2008 amendment, by ch. 27, substituted "and modular buildings, chapter 43, title 39, Idaho Code" for "the Idaho building code act; chapter 43, title 39, Idaho Code, relating to" in subsection (2)(d).

This section was amended by four 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 65, added "and the board of midwifery, as provided by chapter 54, title 54, Idaho Code" at the end in subsection (2)(b).

The 2009 amendment, by ch. 167, added subsection (2)(f)(g).

The 2009 amendment, by ch. 178, in subsection (2)(d), substituted "manufactured

housing board" for "manufactured home advisory board," inserted "license," and substituted "modular building advisory board" for "modular building"; and added subsection (2)(f).

The 2009 amendment, by ch. 251, near the end in subsection (2)(b), inserted "the certified shorthand reporters board, as provided by chapter 31, title 54, Idaho Code; the driving businesses licensure board, as provided by chapter 54, title 54, Idaho Code"; and, in subsection (2)(d), substituted "manufactured housing board" for "manufactured home advisory board" and inserted "license" and "advisory board."

The 2010 amendment, by ch. 79, corrected the paragraph (2)(f) designation which was duplicated by the 2009 legislation.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 151, substituted "Idaho board of licensure of professional engineers and professional land surveyors" for "state board of engineering examiners" near the middle in paragraph (2)(b).

The 2011 amendment, by ch. 181, added "and the Idaho alfalfa and clover seed commission, as provided in chapter 42, title 22, Idaho Code" at the end of paragraph (2)(a).

67-2601A. Division of building safety. — (1) The division of building safety will be headed by an administrator appointed by and serving at the will of the governor. The division administrator, deputy administrators and regional managers shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) The administrator shall administer the following provisions and shall perform such additional duties as are imposed on him by law: chapter 41, title 39, Idaho Code, relating to the building code board; chapter 40, title 39, Idaho Code, relating to manufactured homes; chapter 41, title 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and installer licensing; chapter 25, title 44, Idaho Code, relating to mobile home rehabilitation; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter

19, title 54, Idaho Code, relating to licensing of public works contractors; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; chapter 45, title 54, Idaho Code, relating to public works construction management licensing; chapter 50, title 54, Idaho Code, relating to heating, ventilation and air conditioning systems; chapter 80, title 39, Idaho Code, relating to school building safety; and chapter 86, title 39, Idaho Code, relating to elevator safety.

(3) The administrator shall cooperate with the industrial commission and aid and assist the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, and at the request of the commission shall make inspection of appliances, tools, equipment, machinery, practices or conditions, and shall make a written report to the commission. The administrator shall make recommendations to the commission to aid the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the authority or powers now vested in the industrial commission.

(4) In administering the laws regulating professions, trades and occupations that are devolved for administration upon the division, and in addition to the authority granted to the administrator by the laws and rules of the agencies and entities within the division, the administrator may:

- (a) Revise the operating structure of the division as needed to provide efficient and appropriate services to the various professions, trades, occupations and programs administered within the division;
- (b) Conduct examinations to ascertain the qualifications and fitness of applicants to exercise the profession, trade or occupation for which an examination is held; pass upon the qualifications of applicants for reciprocal licenses, certificates and authorities; prescribe rules for a fair and impartial method of examination of candidates to exercise the respective professions, trades or occupations; issue registrations, licenses and certificates; and until fees are established in rule, the administrator shall charge a fee of seventy-five dollars (\$75.00) for each examination administered;
- (c) Conduct hearings on proceedings to discipline, renew or reinstate licenses, certificates or authorities of persons exercising the respective professions, trades or occupations; appoint hearing officers, administer oaths, issue subpoenas, and compel the attendance of witnesses; revoke, suspend, refuse to renew, or take other disciplinary action against such licenses, certifications or authorities; and prescribe rules to recover costs and fees incurred in the investigation and prosecution of any certificate holder, licensee or registrant of the division, its boards, bureaus and programs, in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, and the laws and rules of the boards, bureaus and programs the division administers;
- (d) Assess civil penalties as authorized;
- (e) Promulgate rules establishing: a coordinated system for the issuance, renewal, cancellation and reinstatement of licenses, certificates, registrations and permits; assessment of all related fees; the terms by which fees

may be prorated, if any; and procedures for the replacement of lost or destroyed licenses, certificates or registrations; and

(f) Promulgate other rules as may be necessary for the orderly administration of the chapters specified in subsection (2) of this section and such rules as may otherwise be required by those chapters as well as rules for the standardization of operating procedures.

(5) Notwithstanding any law governing any specific board, bureau or program comprising the division of building safety, each board member shall hold office until a successor has been duly appointed and qualified.

(6) The administrator shall have the authority to employ individuals, make expenditures, enter into contracts, require reports, make investigations, travel, and take other actions deemed necessary.

History.

I.C., § 67-2601A, as added by 2007, ch. 162, § 2, p. 485; am. 2010, ch. 165, § 1, p. 338; am. 2012, ch. 28, § 2, p. 85.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 165, added “and until fees are established in rule, the administrator shall charge a fee of seventy-five dollars (\$75.00) for each examination

administered” at the end of in paragraph (4)(b).

The 2012 amendment, by ch. 28, substituted “regional managers” for “bureau chiefs” in the second sentence in subsection (1).

67-2602. Bureau of occupational licenses. — (1) The bureau of occupational licenses created in the department of self-governing agencies by section 67-2601, Idaho Code, shall be empowered, by written agreement between the bureau and each agency for which it provides administrative or other services as provided by law, to provide such services for the board of acupuncture, board of architectural examiners, board of barber examiners, board of chiropractic physicians, board of cosmetology, counselor licensing board, state board of dentistry, speech and hearing services licensure board, physical therapy licensure board, board of landscape architects, liquefied petroleum gas safety board, board of morticians, board of naturopathic medical examiners, board of examiners of nursing home administrators, board of optometry, board of podiatrists, board of psychologist examiners, real estate appraiser board, board of examiners of residential care facility administrators, board of social work examiners, board of midwifery and such other professional and occupational licensing boards or commodity commissions as may request such services. The bureau may charge a reasonable fee for such services provided any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the bureau of occupational licenses, each board member shall hold office until a successor has been duly appointed and qualified.

(3) The department of self-governing agencies, by and through the bureau of occupational licenses, shall be empowered to provide administrative or other services for the administration of chapter 48, title 54, Idaho Code, to issue, suspend, revoke or refuse to renew licenses and certificates,

to issue subpoenas, to prescribe and impose fees and to assess administrative penalties pursuant to the provisions of chapter 48, title 54, Idaho Code.

History.

I.C., § 67-2602, as added by 1974, ch. 13, § 2, p. 138; am. 1982, ch. 183, § 3, p. 480; am. 1983, ch. 139, § 20, p. 336; am. 1994, ch. 15, § 2, p. 28; am. 1999, ch. 163, § 1, p. 450; am. 2000, ch. 82, § 3, p. 170; am. 2000, ch. 274,

§ 153, p. 799; am. 2001, ch. 202, § 2, p. 681; am. 2002, ch. 111, § 3, p. 310; am. 2003, ch. 201, § 19, p. 529; am. 2005, ch. 143, § 3, p. 441; am. 2005, ch. 277, § 4, p. 852; am. 2005, ch. 329, § 4, p. 1026; am. 2006, ch. 116, § 23, p. 315; am. 2009, ch. 65, § 3, p. 177.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 65, inserted

“board of midwifery” near the end of the first sentence in subsection (1).

67-2608. Bureau chief to cooperate with other agencies. — The chief of the bureau of occupational licenses may, in the administration of this chapter, share information and otherwise cooperate with government regulatory and law enforcement agencies.

History.

I.C., § 67-2608, as added by 1974, ch. 13, § 2, p. 138; am. 2010, ch. 159, § 1, p. 333.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 159, substituted the language beginning “may, in the administration of this chapter” through to the end of the section for “is hereby directed, in

the administration of this act, to cooperate with the other departments and agencies of the state of Idaho which have the responsibility of enforcing licensing, taxing and inspection laws.”

67-2609. Registration of occupations. — (a) The bureau of occupational licenses shall wherever the several laws regulating professions, trades and occupations which are devolved upon the bureau for administration so require or pursuant to written agreement as provided in section 67-2604, Idaho Code, exercise, in its name, or as authorized agent, but subject to the provisions of this chapter, the following powers:

(1) To conduct examinations to ascertain the qualifications and fitness of applicants to exercise the profession, trade or occupation for which an examination is held; to pass upon the qualifications of applicants for reciprocal licenses, certificates and authorities.

(2) To prescribe rules for a fair and wholly impartial method of examination of candidates to exercise the respective professions, trades or occupations.

(3) To prescribe rules defining, for the respective professions, trades and occupations, what shall constitute a school, college or university, or department of a university, or other institution, reputable and in good standing and to determine the reputability and good standing of a school, college or university, or department of a university, or other institution, by reference to a compliance with such rules.

(4) To establish a standard of preliminary education deemed requisite to admission to a school, college or university, and to require satisfactory

proof of the enforcement of such standard by schools, colleges and universities.

(5) To conduct hearings on proceedings to revoke or refuse renewal of licenses, certificates or authorities of persons exercising the respective professions, trades or occupations, and to revoke or refuse to renew such licenses, certificates or authorities.

(6) To formulate rules for adoption by the boards allowing the boards to recover costs and fees incurred in the investigation and prosecution of a licensee in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, for a violation of laws or rules of the boards.

(7) To formulate rules for adoption by the boards establishing a schedule of civil fines which may be imposed upon a licensee prosecuted in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, for a violation of laws or rules of the boards. Any civil fine collected by a board for a violation of its laws or rules shall not exceed one thousand dollars (\$1,000), unless otherwise provided by statute, and shall be deposited in the bureau of occupational licensing account.

(8) To formulate rules when required in any act to be administered.

(9) To collect and pay such fees as are required for criminal background checks of applicants, licensees or registrants.

(b) None of the above enumerated functions and duties shall be exercised by the bureau of occupational licenses except upon the action and report in writing of persons designated from time to time by the chief of the bureau of occupational licenses to take such action and to make such report, for the respective professions, trades and occupations.

History.

I.C., § 67-2609, as added by 1974, ch. 13, § 2, p. 138; am. 1998, ch. 419, § 1, p. 1322;

am. 2001, ch. 202, § 3, p. 681; am. 2013, ch. 178, § 1, p. 414.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 178, added paragraph (a)(9).

67-2620. Military education training and service — Qualifications for licensure, certification or registration. — (1) Each of the professional and occupational licensing boards within the department of self-governing agencies may accept military education, training or service by an individual as a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state or the naval militia of any state toward the qualifications to receive licensure, certification or registration. Each professional and occupational licensing board is authorized to promulgate rules to implement the provisions of this subsection.

(2) Each of the professional and occupational licensing boards within the department of self-governing agencies may expedite the application of a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state or the naval militia of

any state or a spouse of such person to receive licensure, certification or registration if such member or spouse of such member possesses necessary education, qualifications or licensure or certification from another state, possession, commonwealth or territory. Each professional and occupational licensing board is authorized to promulgate rules to implement the provisions of this subsection.

History.

I.C., § 67-2620, as added by 2012, ch. 108,
§ 2, p. 298; am. 2013, ch. 211, § 1, p. 500.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 211, inserted the subsection (1) designation and added subsection (2).

CHAPTER 27**DEPARTMENT OF FINANCE****SECTION.**

67-2751. Definitions.

67-2752. Financial fraud illegal.

SECTION.

67-2754. Powers of director.

67-2756. Private remedies.

67-2751. Definitions. — As used in sections 67-2750 through 67-2762, Idaho Code:

(1) “Act” or “Idaho Financial Fraud Prevention Act” means sections 67-2750 through 67-2762, Idaho Code.

(2) “Department” means the Idaho department of finance.

(3) “Director” means the director of the Idaho department of finance or his designee.

(4) “Financial institution” means any state or federally chartered bank, savings bank, savings and loan association, thrift institution, holding company, credit union, credit union service organization, “regulated lender” as defined in section 28-41-301, Idaho Code, collection agency licensed under the Idaho collection agency act, mortgage lender, mortgage broker, or loan originator licensed under the Idaho residential mortgage practices act, licensee under the Idaho money transmitters act, escrow agency, or broker-dealer or investment advisor licensed under the Idaho securities act [uniform securities act (2004)] or federal law, or such an institution licensed under the laws of another state, and doing business in Idaho.

(5) “Person” means a natural person, firm, partnership, association, corporation, limited liability company, limited liability partnership, trust, or any other association of individuals, however organized, and whether or not citizens or residents of this state.

History.

I.C., § 67-2751, as added by 2005, ch. 265,
§ 3, p. 810; am. 2013, ch. 54, § 17, p. 108.

STATUTORY NOTES

Cross References.

Idaho collection agency act, § 26-2221 et seq.

Idaho money transmitters act, § 26-2901 et seq.

Idaho residential mortgage practices act, § 26-31-101 et seq.

Uniform securities act (2004), § 30-14-101 et seq.

Amendments.

The 2013 amendment, by ch. 54, substi-

tuted "section 28-41-301, Idaho Code" for "section 28-41-301(37), Idaho Code" near the middle of subsection (4).

Compiler's Notes.

The bracketed insertion near the end of subsection (4) was added by the compiler to account for the 2004 repeal of the Idaho securities act and the enactment of the uniform securities act.

67-2752. Financial fraud illegal. — It is unlawful for any person, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud a financial institution;

(2) To obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations, or promises or through the use of any fraudulent device, scheme, artifice, or fraudulent monetary instrument;

(3) To falsely represent that a person is a financial institution or a representative of a financial institution, for the purpose of obtaining money, goods, or services from any person;

(4) To obtain or record or attempt to obtain or record, personal identifying information of another person without the authorization of that person, for the purpose of obtaining money, goods, or services from any person, through a false or fraudulent representation that the person doing so is a financial institution. "Personal identifying information" has the same meaning as set forth in section 18-3122(10), Idaho Code, or any successor to that section;

(5) To fraudulently make, emboss, encode, or use a financial transaction card, financial transaction card account number, personal identification code or credit card sales draft, as defined in sections 18-3122, 18-3123, 18-3124 and 18-3125A, Idaho Code, or any successors to those sections, for the purpose of obtaining money, goods, or services from any person; or

(6) While serving as an employee, agent or representative of a financial institution, to obtain or attempt to obtain the money, funds, credits, assets, securities, or other property owned by, held by, or under the custody or control of, the financial institution by means of false or fraudulent pretenses, representations, or promises or by means of any fraudulent device, scheme or artifice, or through the use of a fraudulent monetary instrument.

(7) To use in a manner likely to cause confusion or mistake or to deceive, the name, trademark, service mark, or logo of a financial institution in connection with the sale, offering for sale, distribution or advertising of any product or service without the consent of the financial institution.

History.

I.C., § 67-2752, as added by 2005, ch. 265, § 4, p. 810; am. 2007, ch. 126, § 8, p. 376.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 126, added subsection (7).

67-2754. Powers of director. — The director shall have the following powers and authority under this act:

(1) Investigations. The director may make such public or private investigations within or without this state as he deems necessary to determine whether any person has violated this act or is attempting or conspiring to violate this act. The investigative powers of the director under this act shall include, but not be limited to, participating in joint or multistate investigations with any regulatory or law enforcement agencies of this state, any other state, the federal government or authorized agency thereof, or any regulatory or law enforcement agency of another country. The director may also participate in any antifraud or criminal information network or service available to the director or the department.

(2) Statements. The director may require or permit any person to file a statement in writing, under oath, to appear before the director and give testimony, or otherwise, as the director may determine, as to all the facts and circumstances concerning the matter to be investigated.

(3) Publication. The director may publish information concerning any violation or attempted violation of this act, or any rule or order hereunder.

(4) Subpoenas and production. Either in the course of an investigation, or in any administrative proceeding brought pursuant to this act, in addition to the powers and penalties set forth in section 67-2717, Idaho Code, the director may subpoena documents and witnesses, take evidence, require the production of any books, papers, correspondence, memoranda, agreements or other documents or records in any form or on any media, which the director, in his discretion, deems material or relevant.

(a) Failure to comply. In case of contumacy or refusal to obey a subpoena or order to compel production issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or the officer designated by him, to produce documentary evidence if so ordered, to appear and produce testimony if so ordered, or to give evidence relating to the matter under investigation or proceeding and any failure to obey such order of the court may be punished by the court as a contempt of court.

(b) Use of evidence or testimony. No person is excused from attending and testifying, from producing any document or record before the director or obeying the subpoena of the director or any officer designated by him or in any proceeding instituted by the director on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(5) Licensing and registration. The director may approve a multistate licensing system for use by persons seeking to obtain, maintain and retain a license under the laws administered by the department of finance. A person who chooses to use an approved multistate licensing system for licensure shall comply with all procedures, requirements and policies of that licensing system including, but not limited to, fees, renewal dates, reinstatement periods, reports and deadlines and may not convert to an alternative licensing system without the prior written consent of the director.

History.

I.C., § 67-2754, as added by 2005, ch. 265,
§ 6, p. 810; am. 2013, ch. 53, § 1, p. 106.

STATUTORY NOTES

Cross References.

For definition of "this act," see § 67-2751(1).

Amendments.

The 2013 amendment, by ch. 53, added subsection (5).

67-2756. Private remedies. — (1) In the event a financial institution indemnifies its customer for damages caused by a violation of this act, or assumes the loss caused its customer by a violation of this act, the financial institution shall be entitled to sue the violator, at law or in equity, to recover any actual damages suffered by its customer, plus costs and attorney's fees incurred in the bringing of the action.

(2) A financial institution may bring an action to enjoin the use prohibited in section 67-2752(7), Idaho Code, and recover all damages suffered by reason of the prohibited use, including reasonable attorney's fees. The financial institution may recover any profits derived from the prohibited use.

History.

I.C., § 67-2756, as added by 2005, ch. 265,
§ 8, p. 810; am. 2007, ch. 126, § 9, p. 376.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 126, rewrote the section catchline, which formerly read:

"Customer indemnification"; and added the subsection (1) designation and subsection (2).

CHAPTER 28

PURCHASING BY POLITICAL SUBDIVISIONS

SECTION.

67-2803. Exclusions.

67-2808. Emergency expenditures — Sole source expenditures.

SECTION.

67-2809. Legislative intent — Public works — Agreements — Savings — Severability.

67-2803. Exclusions. — The procurement requirements established in this chapter shall not be applicable to:

(1) The acquisition of personal property when the procurement duplicates

the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government;

(2) Contracts or purchases wherein expenditures are less than twenty-five thousand dollars (\$25,000), provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board;

(3) Disbursement of wages or compensation to any employee, official or agent of a political subdivision for the performance of personal services for the political subdivision;

(4) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision;

(5) Procurement of an interest in real property;

(6) Procurement of insurance;

(7) Costs of participation in a joint powers agreement with other units of government;

(8) Procurement of used personal property by irrigation districts, drainage districts and their boards of control; or

(9) Federal government general services administration (GSA) schedules or federal multiple award schedules (MAS).

History.
I.C., § 67-2803, as added by 2005, ch. 213, § 37, p. 637; am. 2009, ch. 174, § 1, p. 554;

am. 2010, ch. 123, § 1, p. 269; am. 2011, ch. 320, § 1, p. 937.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 174, added subsection (8).
The 2010 amendment, by ch. 123, inserted “drainage districts” in subsection (8).

The 2011 amendment, by ch. 320, added subsection (9).

67-2805. Procurement of public works construction.

JUDICIAL DECISIONS

ANALYSIS

Award.
Prior experience.

Award.
Under Category A, as set forth in subsection (3)(a), the reason for awarding a public works contract to someone other than the apparent low bidder must be either that the original party was the apparent, but not the actual, low bidder, that the original party did not comply with administrative requirements, or that the original party does not currently hold the requisite license. *Hillside Landscape Constr., Inc. v. City of Lewiston*, 151 Idaho 750, 264 P.3d 388 (2011).

Prior Experience.
Because a city did not follow the Category B procedures set forth in paragraph (3)(b) to pre-qualify bidders, but instead proceeded under Category A in paragraph (3)(a), when it sought bids to replace a golf course irrigation system, it could not reject a bid on the ground that the contractor lacked sufficient experience for the project. Lack of prior experience was not a permissible reason under Category A for not awarding a public works contract to the apparent low bidder. *Hillside Landscape*

Constr., Inc. v. City of Lewiston, 151 Idaho
750, 264 P.3d 388 (2011).

67-2808. Emergency expenditures — Sole source expenditures.

— (1) Emergency expenditures.

(a) The governing board of a political subdivision may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money if:

- (i) There is a great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster;
- (ii) It is necessary to do emergency work to prepare for the national or local defense; or
- (iii) It is necessary to do emergency work to safeguard life, health or property.

(b) Upon making the declaration of emergency, any sum required in the emergency may be expended without compliance with formal bidding procedures.

(2) Sole source expenditures.

(a) The governing board of a political subdivision may declare that there is only one (1) vendor if there is only one (1) vendor for the public works construction, services or personal property to be acquired. For purposes of this subsection, only one (1) vendor shall refer to situations where there is only one (1) source reasonably available and shall include, but not be limited to, the following situations:

- (i) Where public works construction, services or personal property is required to respond to a life-threatening situation or a situation which is immediately detrimental to the public welfare or property;
- (ii) Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration;
- (iii) Where a sole supplier's item is needed for trial use or testing;
- (iv) The purchase of mass-produced movies, videos, books or other copyrighted materials;
- (v) The purchase of public works construction, services or personal property for which it is determined there is no functional equivalent;
- (vi) The purchase of public utility services;
- (vii) The purchase of products, merchandise or trademarked goods for resale at a political subdivision facility; or
- (viii) Where competitive solicitation is impractical, disadvantageous or unreasonable under the circumstances.

(b) Upon making the declaration that there is only one (1) vendor for public works construction, services or personal property, unless the public works construction, services or personal property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, notice of a sole source procurement shall be published in the official newspaper of the political subdivision at least fourteen (14) calendar days prior to the award of the contract.

History.

I.C., § 67-2808, as added by 2005, ch. 213,
§ 37, p. 637; am. 2013, ch. 344, § 2, p. 928.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 344, substituted “public works construction, services or

personal property” for “property” throughout the section.

67-2809. Legislative intent — Public works — Agreements — Savings — Severability. — (1) It is the intent of the legislature to provide for the efficient and cost-effective procurement of goods and services by political subdivisions as market participants.

(2) Notwithstanding any other provision found in chapter 10, title 44, Idaho Code, chapter 28, title 67, Idaho Code, and chapter 57, title 67, Idaho Code, the following shall apply:

(a) This act shall be known as the “Open Access to Work Act.”

(b) For purposes of this section, the following terms have the following meanings:

(i) “Political subdivision” means the state of Idaho, or any county, city, school district, sewer district, fire district or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof;

(ii) “Public works” shall have the same meaning as that provided for “public works construction” in section 54-1901, Idaho Code.

(c)(i) Except as provided in subsection (2)(c)(ii) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:

1. A predetermined amount of wages or wage rate; or

2. A type, amount or rate of employee benefits.

(ii) Subsection (2)(c)(i) of this section shall not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.

(d) The state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works or obligates funds pursuant to such a contract shall ensure that neither the awarding governmental entity nor any construction manager acting on the governmental entity’s behalf shall:

(i) In its bid documents, specifications, project agreements or other controlling documents for a public works construction contract, require or prohibit bidders, offerors, contractors, subcontractors or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreements or any other agreement

with one (1) or more labor organizations on the same or other related construction projects; or

(ii) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one (1) or more labor organizations on the same or other related construction projects.

Nothing in subsection (2)(d) of this section shall prohibit bidders, offerors, contractors, subcontractors or material suppliers from voluntarily entering into agreements described in subparagraph (i) of this paragraph.

(e) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violates the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

(f) The provisions of this section apply to any contract executed after the effective date of this act.

(3) This act does not prohibit or interfere with the rights of employers or other parties to enter into agreements or engage in any other activity protected by the national labor relations act, 29 U.S.C. section 151, et seq.

(4) The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.

I.C., § 67-2809, as added by 2012, ch. 312,
§ 3, p. 860.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in subsection (4) refers

to S.L. 2012, ch. 312, which is codified as
§§ 44-2007, 44-2008, and this section.

CHAPTER 29

IDAHO STATE POLICE

SECTION.

67-2901. Idaho state police created — Director — Divisions — Powers and duties — Failure of peace officers to obey orders, misdemeanor — Deputies — Compensation and powers.
67-2901B. Inspection of motor carriers — Ex-

SECTION.

emptions — Certification of repair — Compliance review — Penalties.
67-2912. State victim notification fund.
67-2914. Idaho law enforcement fund established.

67-2901. Idaho state police created — Director — Divisions — Powers and duties — Failure of peace officers to obey orders, misdemeanor — Deputies — Compensation and powers. — (1) There is hereby created the Idaho state police. The Idaho state police shall, for the

purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The governor, with the advice and consent of the senate, shall appoint a director of the Idaho state police who shall serve at the pleasure of the governor. The director shall receive such salary as fixed by the governor.

(3) The Idaho state police shall be composed of such divisions as may be established by law and other administrative units as may be established by the director for the proper and efficient administration of the powers and duties assigned to the director or the state police. The director shall appoint, subject to the approval of the governor, an administrator for each division within the state police.

(4) The director shall exercise all of the powers and duties necessary to carry out the proper administration of the state police, and may delegate duties to employees and officers of the state police.

(5) The Idaho state police shall have power to:

(a) Enforce all of the penal and regulatory laws of the state, to preserve order, and exercise any and all powers, duties and authority of any sheriff or other peace officer anywhere in the state of Idaho, in the same manner and with like authority as the sheriffs of the counties; said department may employ from time to time, to carry out any of the provisions of this subsection, such deputies or special deputies as may be deemed, by the governor of the state of Idaho, necessary to carry out these duties and powers, and deputies shall have power to deputize other persons as deputies when necessary; said department may call into the police service of the state any and all peace officers of the state, of any city, or of any county, and may deputize private citizens, when deemed necessary by the governor of the state, to preserve order and enforce law in any extraordinary emergency when the governor shall have declared, by order in writing, the existence of such extraordinary emergency; the governor shall designate by order such peace officers or private persons as are to be called into the service of the state, and when such peace officers or deputized citizens are so called into the police service of the state such officers shall act under the direction of the director of the state police in such manner as may be directed and ordered by the governor; failure on the part of any such peace officer of the state, or person so deputized, to so act and obey such orders shall constitute a misdemeanor; the governor shall fix the compensation of such deputies;

(b) Prevent and detect crime and apprehend criminals and maintain order;

(c) Require all persons using the highways in the state to do so carefully, safely, and with the exercise of care for the persons, property and safety of others;

(d) Safeguard and protect the surface and other physical portions of the state highways and enforce any laws for highway safety;

(e) Enforce federal statutes and regulations relating to motor carrier safety and hazardous materials for interstate carriers;

(f) Enforce Idaho statutes and rules of the Idaho state police applicable to motor carriers;

(g) Enforce all of the laws of the state enacted for the identification, inspection and transportation of livestock and all laws of the state designed to prevent the theft of livestock;

(h) Regulate traffic on all highways and roads in the state;

(i) Perform all of the duties and exercise all of the powers of peace officers vested in the director of the Idaho state police;

(j) Execute and serve any warrant of arrest or search warrant issued by proper authority of the state, according to the tenor thereof, in any part of the state;

(k) Arrest without warrant, any person committing or attempting to commit in their presence or view a breach of the peace or any other violation of any of the laws of the state;

(l) Members of the Idaho state police shall be subject to the call of the governor and are empowered to cooperate with any other department or authority of the state, with counties and municipalities, or any locality in detecting crime, apprehending criminals and preserving law and order throughout the state; but the Idaho state police shall not be used as a posse in any municipality, except when ordered by the governor to do so; provided nothing herein contained shall be construed to vest direction or control over any sheriff, policeman, marshal or constable in the Idaho state police or any employer or officer thereof;

(m) Each member of the Idaho state police shall take and subscribe to an oath of office to support the constitution and laws of the United States and the state of Idaho, and to honestly and faithfully perform the duties imposed upon him under the provisions of the laws of Idaho as a member of the Idaho state police. The oath shall be filed with the director.

(6) The director shall operate and supervise a forensic laboratory which will provide to state and local agencies having responsibility for enforcement of the penal laws of this state assistance in the collection, preservation and analysis of evidence in criminal cases. Idaho state police forensic services resources including, but not limited to, equipment, instrumentation, facilities and supplies may be used only by authorized employees or approved subcontractors of Idaho state police forensic services.

(7) The director shall provide security and protection for the governor and the governor's immediate family to the extent and in the manner the governor and the director deem adequate and appropriate.

(8) At the written direction of the governor or the director, the director shall provide security and protection for the lieutenant governor and the lieutenant governor's immediate family to the extent and in the manner the lieutenant governor and the director deem adequate and appropriate.

(9) The director shall provide security and protection for both houses of the legislature while in session as in the opinion of the speaker of the house and the president of the senate and the director deem necessary.

(10) The director shall provide security and protection for the supreme court and the court of appeals while they are in session, and at their places of work, as the chief justice and the director deem necessary.

(11) The director may award to an officer, upon retirement, that officer's badge, duty weapon and handcuffs, providing that a committee of three (3)

of the officer's peers certifies to the director that the retiring officer has served meritoriously for a minimum of fifteen (15) years and should therefore be so honored.

(12) The director, within the limits of any appropriation made available for such purposes, shall for such Idaho state police:

(a) Establish such ranks, grades and positions as shall appear advisable and designate the authority and responsibility in each such rank, grade and position;

(b) Appoint such personnel to such rank, grade and position as are deemed by him to be necessary for the efficient operation and administration of the Idaho state police, and only those applicants shall be appointed or promoted who best meet the prescribed standards and prerequisites; provided however, that all employees shall be selected in the manner provided for in chapter 53, title 67, Idaho Code, and shall be probationers and on probation for a period of one (1) year from the date of appointment;

(c) Formulate and place in effect such rules for the Idaho state police as from time to time appear to him advisable;

(d) Prescribe by official order the uniform and equipment of the employees in the Idaho state police;

(e) Station employees in such localities as he shall deem advisable for the enforcement of the laws of the state;

(f) Have purchased, or otherwise acquired, by the purchasing agent of the state, motor vehicle equipment and all other equipment and commodities deemed by him essential for the efficient performance of the duties of the Idaho state police and purchase and install approved mechanical devices and equipment for the rapid transmission and broadcasting of information relative to crime, apprehension of criminals and the administration of the business of the Idaho state police.

(13)(a) The director shall issue to every eligible police officer member of the Idaho state police, as defined in section 59-1303(3), Idaho Code, and pursuant to the contract provided for by the personnel group insurance administrator in the department of administration, a term group life insurance certificate in the face amount of fifty thousand dollars (\$50,000) on the life of such members. Said insurance certificate shall set forth the name or names of such beneficiary or beneficiaries as the insured may name or designate.

(b) Any eligible person entering the employ of the Idaho state police as an active police officer after the effective date of this act shall be insured as other members of the state police immediately upon taking the oath of office.

(c) Every member of the Idaho state police, upon termination of active duty or permanent release, may surrender said certificate to the head of the state police, or, at the person's option, may convert the insurance in accordance with the provisions of the contract, and no further premiums shall be paid on said policy by the state of Idaho.

(d) The director is hereby directed to hereafter include in the budget of the Idaho state police an amount sufficient to pay the annual costs

accruing with respect to policies of insurance purchased under the provisions of this chapter.

(e) The premiums on the insurance herein provided for are to be paid one-half (1/2) by the employee and one-half (1/2) by the state. The director is hereby authorized to make a monthly deduction on the payroll of the amount due from each employee under this chapter.

(14) Nothing in this section shall affect the duties of the sheriff as described in section 31-2202, Idaho Code, or the primary duty, described in section 31-2227, Idaho Code, of the sheriff and prosecuting attorney of each of the several counties to enforce all the penal provisions of any and all statutes of this state.

History.

1919, ch. 8, § 31, p. 43; C.S., § 332; am. 1923, ch. 152, § 1, p. 221; I.C.A., § 65-2801; am. 1963, ch. 91, § 1, p. 288; am. 1970, ch. 217, § 1, p. 616; am. 1971, ch. 173, § 19, p. 812; am. 1974, ch. 27, § 2, p. 811; am. 1982,

ch. 30, § 1, p. 59; 1982, ch. 95, § 139, p. 185; am. 1986, ch. 215, § 1, p. 549; am. 1988, ch. 47, § 1, p. 54; am. 1995, ch. 116, § 1, p. 386; am. 2000, ch. 469, § 4, p. 1450; am. 2008, ch. 85, § 2, p. 223; am. 2012, ch. 272, § 1, p. 767; am. 2013, ch. 175, § 1, p. 404.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 85, added subsection (9) and redesignated the subsequent subsections accordingly.

The 2012 amendment, by ch. 272, added subsection (8) and renumbered the subsequent subsections accordingly.

The 2013 amendment, by ch. 175, added the last sentence in subsection (6).

section to “the effective date of this act” is to March 14, 1995 since present subsections (12) and (13) of this section were added by S.L. 1995, ch. 116 which became effective March 14, 1995.

Effective Dates.

Section 2 of S.L. 2012, ch. 272 declared an emergency. Approved April 3, 2012.

Compiler's Notes.

The reference in subsection (13)(b) of this

67-2901B. Inspection of motor carriers — Exemptions — Certification of repair — Compliance review — Penalties. — (1) All motor carriers, except those exempted under the provisions of subsection (2) of this section, are subject to compliance review and inspection by authorized state police employees for compliance with federal motor carrier safety and hazardous materials regulations and for compliance with applicable Idaho laws and rules promulgated by the director pursuant to the provisions of section 67-2901A, Idaho Code. A motor carrier shall submit any vehicle to a safety inspection when requested to do so by an authorized state police employee. Such inspections shall comply, to the extent possible, with national and industry standards for truck inspections and truck safety as adopted by the commercial vehicle safety alliance. A written inspection report shall be provided to the owner, operator or agent of the vehicle following any inspection review pursuant to this section.

(2) The following intrastate motor carriers shall be exempt from safety inspections and compliance reviews:

(a) Motor vehicles employed solely in transporting school children and teachers to or from school or to and from approved school activities, when the motor vehicles are either:

- (i) Wholly owned and operated by such school, or
 - (ii) Leased or contracted by such school and the motor vehicle is not used in the furtherance of any other commercial enterprise; or
 - (b) Taxicabs or other motor vehicles performing a licensed or franchised taxicab service, having a seating capacity of not more than seven (7) passengers within twenty-five (25) miles of the boundaries of the licensing or franchising jurisdiction; or
 - (c) Motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroads or airports or other common carrier stations; or
 - (d) Motor vehicles controlled and operated by any farmer when used in the transportation of his farm equipment or in the transportation of supplies to his farm; or
 - (e) Motor vehicles used exclusively in the distribution of newspapers; or
 - (f) Transportation of persons or property by motor vehicle at an airport when incidental to transportation by aircraft or other transportation in substitution for scheduled airline service when the carrier cannot provide the scheduled service because of weather and/or mechanical conditions and the transportation is arranged for and paid by the affected airlines; or
 - (g) Transportation of persons and/or property, including mobile and modular houses manufactured with wheels and undercarriage as part of the substructure, but not transportation of other houses, buildings or structures within a municipality or territory contiguous to such municipality if such operation outside such municipality be a part of a service maintained within the limits of the municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare; or
 - (h) The transportation of agricultural products including fresh fruits and vegetables, livestock, livestock feed or manure at any time of the year; or
 - (i) Motor propelled vehicles for the sole purpose of carrying United States mail or property belonging to the United States; or
 - (j) Motor carriers transporting products of the forest at any time of the year; or
 - (k) Motor carriers transporting products of the mine including sand, gravel and aggregates thereof, except petroleum products and wet concrete; or
 - (l) Motor carriers transporting household goods as defined by the federal surface transportation board; or
 - (m) Vehicles properly equipped, designed and customarily used for the transportation of disabled or abandoned vehicles by means of a crane, hoist, tow bar, dolly or roll bed, which vehicle shall be known as a "wrecker (tow truck)."
- (3) A motor carrier which has received a written inspection report prepared pursuant to subsection (1) of this section indicating that his vehicle does not comply with applicable federal laws or regulations or Idaho laws or rules, shall certify in writing to the director or his designee within fifteen (15) days of his receipt of the inspection report that he has brought his vehicle into compliance with said laws, regulations or rules. The director

or his designee may assess an administrative penalty to any person who does not comply with the certification provisions of this section or who makes a false certification. The penalty shall not exceed one hundred dollars (\$100) for failure to comply with an inspection report or for making a false certification. If an assessment is contested, the director shall comply with the provisions governing contested cases under the administrative procedure act, chapter 52, title 67, Idaho Code.

(4) Any motor carrier subject to rules promulgated under the provisions of section 67-2901A, Idaho Code, shall submit to a compliance review upon request of the director or any officer designated by him, by providing for inspection or copying at any reasonable time, the records, books, papers and documents relating to the safety management systems or program of such motor carrier.

(5) Any penalties collected pursuant to subsection (3) of this section shall be deposited to the state highway account.

History.

I.C., § 67-2901B, as added by 1999, ch. 383, § 20, p. 27; am. 2000, ch. 469, § 6, p. 1450;

am. 2006, ch. 138, § 1, p. 393; am. 2008, ch. 155, § 1, p. 445.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 155, in subsection (2)(k), added "and wet concrete."

the act should take effect on and after January 1, 2009.

Effective Dates.

Section 2 of S.L. 2008, ch. 155 provided that

67-2912. State victim notification fund. — (1) There is hereby established in the state treasury the state victim notification fund. Moneys in the fund shall be perpetually appropriated to, and shall be used by the director of, the Idaho state police. Moneys deposited to the fund shall be expended for the purpose of defraying the costs of administering the statewide automated victim information and notification (SAVIN) system by the Idaho sheriffs' association for the purpose of satisfying the provisions of section 22, article I, of the constitution of the state of Idaho requiring victim notification of offender court and incarceration status. Moneys deposited to the fund shall be paid to the Idaho sheriffs' association on a quarterly basis for the reimbursement of all costs associated with administering the SAVIN system. The director of the Idaho state police is authorized to allocate up to five percent (5%) of the moneys in the fund for reimbursement of all administrative expenses in relation to its administration of the fund. At the end of each state fiscal year, all moneys remaining in the fund after all costs for the administration of the SAVIN system have been paid, less one quarter's operating and administrative moneys, shall be remitted to the crime victims compensation account established in section 72-1009, Idaho Code. The state treasurer shall invest all moneys in the state victim notification fund and interest and proceeds earned shall be retained in the fund. The Idaho sheriffs' association shall provide evidence of an independent audit of the moneys received and expenditures made under this section

to the Idaho state police on a yearly basis and shall be subject to audit by the Idaho state controller at the discretion of the state controller.

(2) The state victim notification fund shall be funded as provided in section 31-3204, Idaho Code.

History.

I.C., § 67-2912, as added by 2012, ch. 114, § 2, p. 316.

STATUTORY NOTES

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

67-2914. Idaho law enforcement fund established. — For the purposes of the Idaho state police, there is established in the state treasury of the state of Idaho the Idaho law enforcement fund, to which shall be deposited funds as provided by law.

History.

I.C., § 49-1301, as added by 1983, ch. 179, § 5, p. 487; am. 1984, ch. 195, § 28, p. 445; am. 1985, ch. 253, § 6, p. 497; am. and

redesig. 1988, ch. 265, § 582, p. 549; am. and redesig. 1995, ch. 116, § 16, p. 386; am. 2000, ch. 469, § 13, p. 1450; am. 2009, ch. 333, § 5, p. 967; am. 2011, ch. 68, § 4, p. 143.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 333, added the subsection (1) designation and subsection (2).

The 2011 amendment, by ch. 68, deleted the subsection (1) designation and deleted former subsection (2), which read: "The Idaho state police provide a critical service to the citizens and motorists of the state of Idaho by providing for the public's health, welfare and safety. In light of the vital service the agency provides, the legislature acknowledges that providing an ongoing and dedicated source of funds for the agency is necessary to safeguard the Idaho state police from the impacts of future economic downturns."

Legislative Intent.

Section 1 of S.L. 2009, ch. 333 provided: "Legislative Intent. The Legislature acknowledges that, beginning July 1, 2010, the revised distribution from the Highway Distribution Account and the revised distribution from gasoline tax revenues provided for in this act will reduce moneys annually provided to the Idaho State Police and the Idaho Department of Parks and Recreation. In light of such reductions, the Legislature will authorize, via concurrent resolution, a legislative task force, comprised of eight members of the

Legislature, including both co-chairs of the Joint Finance-Appropriations Committee, to study potential sources of dedicated revenue to offset the reductions that will be sustained by the Idaho State Police and the Idaho Department of Parks and Recreation. The Legislature declares that every effort will be made to find appropriate alternative dedicated sources of moneys on an ongoing basis to offset the reduced distributions to the Idaho State Police and the Idaho Department of Parks and Recreation."

Compiler's Notes.

Section 6 of S.L. 2009, ch. 333 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 7 of S.L. 2009, ch. 333 declared an emergency. Approved May 12, 2009.

S.L. 2011, chapter 68 became law without the signature of the Governor, effective July 1, 2011.

CHAPTER 30

CRIMINAL HISTORY RECORDS AND CRIME INFORMATION

SECTION.

67-3003. Duties of the department.

67-3004. Fingerprinting and identification.

SECTION.

67-3010. Fees authorized.

67-3003. Duties of the department. — (1) The department shall establish a bureau of criminal identification to:

- (a) Serve as the state's central repository of criminal history records;
- (b) Conduct criminal background checks as authorized by law or rule and provide fingerprint identification services;
- (c) Obtain and electronically file information relating to in-state stolen vehicles and in-state wanted persons;
- (d) Establish and maintain an automated fingerprint identification system;
- (e) Establish a uniform crime reporting system for the periodic collection and reporting of crimes, and compile and publish statistics and other information on the nature and extent of crime in the state;
- (f) Maintain, pursuant to department rule, other identification information, which may include, but is not limited to, palm prints and photographs;
- (g) Cooperate with other criminal justice agencies of the state, state and federal courts, the criminal records repositories of other states, the federal bureau of investigation criminal justice information services, the national law enforcement telecommunications system, and other appropriate agencies and systems, in the operation of an effective interstate and national system of criminal identification, records and statistics;
- (h) Develop and implement a training program to assist criminal justice agencies with the recordkeeping and reporting requirements of this chapter; and
- (i) Obtain and electronically transmit to the national instant criminal background check system (NICS), in accordance with federal law, information relating to eligibility to receive or possess a firearm pursuant to state or federal law. Upon notification to the department that the basis for which any such information previously transmitted to the NICS does not apply or no longer applies, the department shall, as soon as practicable, notify the NICS of such change and shall update, correct, modify or remove such information from the NICS database.

(2) In accordance with chapter 52, title 67, Idaho Code, the department may adopt rules necessary to implement the provisions of this chapter. Rules relating to information maintained and reported by the court shall be made after consultation with and approval by the Idaho supreme court.

History.

I.C., § 67-3003, as added by 1999, ch. 249,
§ 2, p. 638; am. 2010, ch. 267, § 2, p. 674.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 267, added paragraph (1)(i).

67-3004. Fingerprinting and identification. — (1) The bureau shall:

- (a) Obtain and file fingerprints, physical descriptions and any other available identifying data on persons who have been arrested or served a criminal summons in this state for a retainable offense;
- (b) Accept fingerprints and other identifying data taken by a law enforcement agency for the purpose of identification or conducting a records review for criminal justice purposes; and
- (c) Process latent fingerprints generated from crime scenes, evidence and law enforcement agencies through the automated fingerprint identification system for prospective identification.

(2) The bureau shall establish policy regarding an arrest fingerprint card and procedures for the taking of fingerprints under this section.

(3) When a person is arrested for a retainable offense, with or without a warrant, fingerprints of the person shall be taken by the law enforcement agency making the arrest. A law enforcement agency may contract or make arrangements with a jail or correctional facility or other criminal justice agency to take the required fingerprints from a person who is arrested by the law enforcement agency.

(4) If a person was arrested and is in the custody of a law enforcement agency, jail or correctional facility and a felony summons or information is filed for an offense separate from the offense for which the person is in custody, the agency, jail or correctional facility shall take the fingerprints of the person in connection with the new offense.

(5) At the initial court appearance or arraignment of a person for an offense pursuant to a felony summons or information, the court, upon notice from the prosecuting attorney, shall order a law enforcement agency to fingerprint the person if he has not been previously fingerprinted for the same offense.

(6) When a defendant is convicted or otherwise adjudicated for a felony offense for which the defendant has not been previously fingerprinted, the court shall order, upon notice from the prosecuting attorney, a law enforcement agency to fingerprint the defendant as a condition of sentence, probation or release.

(7) When a person is received by a state correctional facility, the department of correction shall ensure that legible fingerprints of the person are taken and submitted to the bureau.

(8) When the bureau receives fingerprints of a person in connection with an arrest or incarceration, the bureau shall make a reasonable effort to confirm within five (5) working days the identity of the person fingerprinted. In an emergency situation when an immediate positive identification is needed, a criminal justice agency may request the department to provide immediate identification service.

(9) If the arresting officer, the law enforcement agency that employs the officer, or the jail or correctional facility where fingerprints were taken is notified by the bureau that fingerprints taken under this section are not legible, the officer, agency or facility shall make a reasonable effort to obtain a legible set of fingerprints. If legible fingerprints cannot be obtained within a reasonable period of time, and if illegible fingerprints were taken under a court order, the officer or agency shall inform the court, which shall order the defendant to submit to fingerprinting again.

(10) Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department.

History.

I.C., § 67-3004, as added by 1999, ch. 249, § 2, p. 638; am. 2010, ch. 33, § 1, p. 63.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 33, rewrote paragraph (1)(c), which formerly read: "Have

the capacity to conduct crime scene investigations for the detection and identification of latent fingerprints."

67-3010. Fees authorized. — The department, by rule, shall establish and collect fees for taking fingerprints and for processing a request for criminal record review of state and federal files when the purpose is other than the administration of criminal justice. The department may also collect and account for fees charged by the federal bureau of investigation for processing fingerprints forwarded to the federal bureau of investigation by the department.

History.

I.C., § 67-3010, as added by 1999, ch. 249, § 2, p. 638; am. 2008, ch. 48, § 1, p. 120.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 48, inserted

"of state and federal files" in the first sentence.

CHAPTER 32**DEPARTMENT OF PUBLIC WORKS****SECTION.**

67-3206. Inventory of real property owned or

leased by state in Boise. [Repealed.]

67-3206. Inventory of real property owned or leased by state in Boise. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 336, § 1, p. 972, was repealed by S.L. 2009, ch. 5, § 1.

CHAPTER 35

STATE BUDGET

SECTION.

67-3502. Format and preparation of annual budget requests.

67-3502. Format and preparation of annual budget requests. —

In the preparation of a state budget, the administrator of the division of financial management shall, not later than the fifteenth day of July have available for all departments, offices and institutions of the state government forms necessary to prepare budget requests. Such forms, whether in electronic or written format, shall be developed by the administrator of the division and the legislative services office to provide the following information:

(1) For the preceding fiscal year, each of the entities listed above shall report all funds available to them regardless of source, including legislative appropriations, and their expenditures by fund and object of all sums received from all sources, segregated as provided for on the forms.

(2) For the current fiscal year, each of the entities listed above shall report their estimates of all funds available to them regardless of source, including legislative appropriations, and their estimated expenditures by fund and object of all sums received from all sources, segregated as provided for on the forms, including a statement of the purposes for which anticipated funds are expected to be expended.

(3) An estimate of appropriations needed for the succeeding fiscal year, showing each primary program or major objective as a separate item of the request and itemized by object code.

(4) A report concerning the condition and management of programs, program performance, and progress toward accomplishing program objectives.

The completed forms shall, not later than the first day of September, except with special permission and agreement of the administrator of the division of financial management and the director of the legislative services office, be filed in the office of the administrator of the division of financial management and the legislative services office. The legislative and judicial departments shall, as early as practicable and in any event no later than the first day of November, prepare and file in the office of the governor and the legislative services office upon the forms described in this section a report of all of the information required in this section. The judicial department shall

include in its filing the budget request of the judicial council as submitted by the judicial council.

History.

I.C., § 67-3502, as added by 1995, ch. 153, § 2, p. 620; am. 1999, ch. 37, § 2, p. 74; am. 2011, ch. 13, § 2, p. 40.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 13, added the last sentence in the last paragraph.

CHAPTER 37**STATE REFUNDING BONDS****SECTION.**

67-3701 — 67-3705. [Repealed.]

67-3701. Issuance and sale authorized. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1925, ch. 22, § 1, p. 32; I.C.A., § 65-3501, was repealed by

S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

67-3702. Signing and authentication of bonds. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1925, ch. 22, § 2, p. 32; I.C.A., § 65-3502, was repealed by

S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

67-3703. Signature of treasurer to bond and coupons. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1925, ch. 22, § 3, p. 32; I.C.A., § 65-3503, was repealed by

S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

67-3704. Annual levy for payment of interest and principal. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1925, ch. 22, § 5, p. 32; I.C.A., § 65-3504, was repealed by

S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

67-3705. Terms of sale. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1925, ch. 22, § 6, p. 32; I.C.A., § 65-3505, was repealed by

S.L. 2007, ch. 285, § 1. For present comparable provisions, see 57-501 et seq.

CHAPTER 38**REPLACEMENT BONDS****SECTION.**

67-3801 — 67-3804. [Repealed.]

67-3801. Issuance upon cancellation of outstanding bonds. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1923, ch. 86, § 1, p. 98; I.C.A., § 65-3601; am. 1994, ch.

180, § 216, p. 420; am. 2002, ch. 32, § 25, p. 46, was repealed by S.L. 2007, ch. 285, § 2.

67-3802. Unauthorized issuance unlawful. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1923, ch. 86,

§ 2, p. 98; I.C.A., § 65-3602, was repealed by S.L. 2007, ch. 285, § 2.

67-3803. Failure to cancel exchanged bonds unlawful. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1923, ch. 86,

§ 3, p. 98; I.C.A., § 65-3603, was repealed by S.L. 2007, ch. 285, § 2.

67-3804. Violation a felony. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1923, ch. 86,

§ 4, p. 98; I.C.A., § 65-3604, was repealed by S.L. 2007, ch. 285, § 2.

CHAPTER 39

FINANCIAL RELIEF OF TAXING DISTRICTS UNDER FEDERAL BANKRUPTCY STATUTE

67-3901. "Taxing district" defined.

JUDICIAL DECISIONS

County.

A county in Idaho is a "taxing district" within the meaning of this section and § 67-3903 and, thus, is authorized to be a debtor in

a Chapter 9 bankruptcy under 11 U.S.C.S. § 109. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

67-3903. Petition by district.

JUDICIAL DECISIONS

County.

A county in Idaho is a "taxing district" within the meaning of § 67-3901 and this section and, thus, is authorized to be a debtor

in a Chapter 9 bankruptcy under 11 U.S.C.S. § 109. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

CHAPTER 40

STATE-TRIBAL RELATIONS ACT

67-4002. Authority to enter into agreements with tribes.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Liti-

gation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

67-4003. Powers of agencies not diminished.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Liti-

gation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

67-4004. Council on Indian affairs created — Appointment of members.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Liti-

gation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

67-4007. Powers and duties of the council.**RESEARCH REFERENCES**

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Litigation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

CHAPTER 41**STATE HISTORICAL SOCIETY****SECTION.**

67-4111. Declaration of policy.

67-4112. Definitions.

67-4123. State historical society — Governed by board of trustees.

67-4124. Board of trustees — Qualifications, appointment and terms of members.

SECTION.

67-4126. Powers and duties of board.

67-4129C. Records management services fund.

67-4131. Records management services — Rules, guidelines, procedures.

67-4111. Declaration of policy. — (1) The citizens of the state of Idaho have an ongoing appreciation, pride and interest in the history of Idaho and the preservation of Idaho's historic resources. There is a need to enhance the cultural environment of the state of Idaho. Industry, commerce, agriculture and quality of life will be enhanced by the preservation of Idaho's cultural and historic resources and the connection to place.

(2) It is hereby declared to be the policy of the state of Idaho to encourage the preservation of our cultural and historic resources and to assist the society in joining with all persons and institutions concerned with the history of Idaho to ensure that cultural and historic resources are recognized and fostered and will add value to and play a significant role in the welfare and educational experience of Idaho's citizens.

History.

I.C., § 67-4111, as added by 2009, ch. 167, § 2, p. 497.

67-4112. Definitions. — As used in this chapter:

(1) "Board" means the board of trustees of the Idaho state historical society.

(2) "Historical record" means any record, artifact, object, historical or archaeological site or structure, document, evidence or public or private writing pursuant to the provisions of title 9, Idaho Code, relevant to the history of the state of Idaho.

(3) "Idaho state historical society" and "society" mean the educational institution pursuant to chapter 41, title 67, Idaho Code.

History.

I.C., § 67-4112, as added by 2009, ch. 167, § 3, p. 497.

67-4123. State historical society — Governed by board of trustees. — The Idaho state historical society, hereinafter referred to as the society, shall be governed by a board of trustees. The society and its board of trustees shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be within the department of self-governing agencies. The board shall be responsible for administering the powers and duties required to preserve and protect any historical record of the history and culture of Idaho.

History.

1970, ch. 145, § 1, p. 438; am. 1974, ch. 10, § 18, p. 49; am. 2009, ch. 167, § 4, p. 497.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 167, substi-

tuted "department of self-governing agencies" for "office of the state board of education."

67-4124. Board of trustees — Qualifications, appointment and terms of members. — The board of trustees shall consist of seven (7) members to be appointed by the governor. The members of the board shall be chosen with due regard to their knowledge, competence, experience and interest in the fields related to the preservation and promotion of Idaho history. The governor shall consider geographic representation when selecting board members by appointing one (1) trustee from each of the seven (7) judicial districts as set forth in chapter 8, title 1, Idaho Code. All appointees shall be chosen solely on the basis of their qualifications. The board shall provide the governor with a list of nominated qualified candidates to fill any board vacancy.

All members of the board shall serve for a specific term. Upon expiration of the terms of members serving on the board on the effective date of this act, the governor shall appoint members for a term of six (6) years, except appointments for the unexpired portion of a term. No member shall serve more than two (2) consecutive full terms.

History.

1970, ch. 145, § 2, p. 438; am. 1974, ch. 10, § 19, p. 49; am. 1989, ch. 32, § 1, p. 37; am.

1999, ch. 15, § 1, p. 23; am. 2009, ch. 167, § 5, p. 497.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 167, throughout the section, substituted "governor" for "state board of education"; in the first para-

graph, inserted "and promotion" in the first sentence and added the last sentence; and, in the last paragraph, twice deleted "of trustees" following "board."

67-4126. Powers and duties of board. — The board of trustees of the society shall have powers and duties as follows:

1. To appoint a director of the society as provided herein and advise him in the performance of his duties and formulate general policies affecting the society.

2. To encourage and promote interest in the history of Idaho and encourage membership in the society.

3. To collect for preservation and display artifacts and information illustrative of Idaho history, culture and society.

4. To print such publications and reports as may be deemed necessary.

5. To encourage creation of county historical societies and museums in the counties of Idaho.

6. To facilitate the use of Idaho records for official reference and historical research.

7. To be responsible for records management services for state government. Records management services include the management, storage and retrieval of all state created records under retention. State created records shall mean any document, book, paper photograph, sound recording or other material, regardless of physical form or characteristic, made or received pursuant to law or in connection with the transaction of official state business. The board may charge reasonable amounts for records management services. The records managed pursuant to this subsection will not be subject to the exemption in public records law provided in section 9-337(15), Idaho Code.

8. To accept from any state, county, or city, or any public official, any official books, records, documents, original papers, newspaper files, printed books, or portraits, not in current use. When such documents are so accepted, copies thereof shall be made and certified under the seal of the society upon application of any person, which person shall pay for such copies reasonable fees established by the society.

9. To require that any state, county, or city, or any public official, deposit official books, records, documents, or original papers, not in current use, which are of definite historical importance, in the society for preservation and to provide methods whereby such materials, which have no significance, may be destroyed.

10. To establish such rules as may be necessary to discharge the duties of the society.

11. To employ such personnel as may be necessary for the administration of its duties in accordance with the rules of the administrator of the division of human resources promulgated pursuant to chapter 52, title 67, Idaho Code.

12. To have and use an official seal.

13. To delegate and provide subdelegation of any such authority.

14. To identify historic, architectural, archaeological, and cultural sites, buildings, or districts, and to coordinate activities of local historic preservation commissions.

15. To serve as the geographic names board of the state of Idaho.

History.

1970, ch. 145, § 4, p. 438; am. 1974, ch. 234, § 1, p. 1596; am. 1982, ch. 365, § 1, p. 915;

am. 1999, ch. 370, § 20, p. 976; am. 2012, ch. 216, § 1, p. 588.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 216, added subsection 7 and renumbered the subsequent subsections accordingly.

67-4129C. Records management services fund. — There is hereby created in the state treasury the “records management services fund.” Moneys in the fund shall consist of funds received from state and local governmental agencies for records management services. The Idaho state historical society shall have the authority to charge and receive payment from such agencies in accordance with rules promulgated or procedures or guidelines established by the agency. Moneys received pursuant to this section are for the operations of maintaining, storing and retrieving governmental records. The legislature shall appropriate all moneys in the records management services fund.

History.

I.C., § 67-4129C, as added by 2012, ch. 216,
§ 2, p. 588.

67-4131. Records management services — Rules, guidelines, procedures. — (1) The Idaho state historical society may develop, subject to the provisions of chapter 52, title 67, Idaho Code, rules and procedures pertaining to records management services. Rules, or if rules are not adopted, guidelines and procedures shall be established:

- (a) Pertaining to retention periods for all state created records;
- (b) Prescribing conditions and procedures for destruction of state created records;
- (c) Ensuring efficient utilization of manpower, building space and supplies with regard to paper flow and forms usage;
- (d) Pertaining to proper and efficient utilization of microfilming and imaging services; and
- (e) Pertaining to protocols for an electronic records management program.

(2) The Idaho state historical society shall develop and shall provide to all state agencies a records management manual containing all the rules and procedures developed for records management. Such manual may be provided to state agencies in an electronic format.

History.

I.C., § 67-4131, as added by 2012, ch. 216,
§ 3, p. 588.

CHAPTER 42

STATE PARKS

SECTION.

67-4223. Powers of board.

67-4223A. Idaho state parks passport program — Fee.

67-4247A. State trust fund for outdoor recre-

ation enhancement — grant evaluation committee. [Repealed.]

67-4223. Powers of board. — The park and recreation board shall:

(1) Adopt, amend or rescind rules as may be necessary for the proper administration of the provisions of sections 67-4218, et seq., Idaho Code, and the use and protection of park and recreational areas subject to its jurisdiction. A violation of any rule promulgated by the board pursuant to this provision which concerns the use and protection of park and recreation areas is an infraction.

(2) Make expenditures for the acquisition, leasing, care, control, supervision, improvement, development, extension and maintenance of all lands under the control of the department and to make arrangements, agreements, contracts or commitments, which may or may not involve expenditures or transfer of funds, with the head of any state institution, department or agency for the improvement or development of lands or properties under the control of the board, or any other department or agency of the state of Idaho.

(3) Appoint advisory, local and regional park and recreational councils, to consider, study and advise in the work of the department for the extension, development, use and maintenance of any areas which are to be considered as future park or recreational sites or which are designated as park recreational areas.

(4) Appoint a six (6) member recreational vehicle advisory committee, who shall be compensated as provided in section 59-509(f), Idaho Code, and act in an advisory capacity to the board on matters relating to the development and improvement of recreational vehicle related facilities and services as provided in subsection (5) of this section. Each member of the advisory committee shall be representative of recreational vehicle users with one (1) from each of the districts described in section 67-4221, Idaho Code. The terms of appointment shall be three (3) years, except that the initial appointees shall commence on the date of appointment and shall be of staggered lengths so that the term of two (2) members will expire annually.

(5) Administer the funds derived from the recreational vehicle account established in section 49-448, Idaho Code, to provide financial assistance in the form of grants to public entities for the acquisition, lease, development, improvement, operations and maintenance of facilities and services designed to promote the health, safety and enjoyment of recreational vehicle users. Up to fifteen percent (15%) of the recreational vehicle account generated each year may be used by the department to defray recreational vehicle program administrative costs. Any moneys unused at the end of the

fiscal year shall be returned to the state treasurer for deposit in the recreational vehicle account.

(6) Cooperate with the United States and its agencies and local governments of the state for the purpose of acquiring, leasing, supervising, improving, developing, extending or maintaining lands which are designated as state parks, state monuments or state recreational areas and to secure agreements or contracts with the United States and its agencies or local governments of the state for the accomplishment of the purposes of sections 67-4218, et seq., Idaho Code.

(7) Construct, lease or otherwise establish public park or recreational privileges, facilities and conveniences and to operate said recreational services and to make and collect reasonable charges for their use or to enter into contracts for their operation. The board may discount fees in order to offer use incentives to generate additional revenue for operation of the state park system. The net proceeds derived shall be credited to the park and recreation account established in section 67-4225, Idaho Code, and are hereby specifically appropriated to defray the cost of the public park or recreational services. The department is specifically authorized to enter into contracts with the United States and its agencies which require that the state expend any excess of revenue above expenses for improvements of the recreational or park area from which the excess was derived.

(a) The board may provide for waiver of fees to any resident of Idaho who is a disabled veteran and whose disability is rated at one hundred percent (100%) or higher, permanent and total.

(b) The board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any senior citizen who possesses a valid federal "golden age passport" or other equivalent successor, as issued by a federally-operated facility where an entrance fee is charged.

(c) If any state recognizes senior citizens by offering a special park pass for use in that state, the board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any person who possesses such a state park pass.

(8) Prepare, maintain and keep up-to-date a comprehensive plan for the provision of the outdoor recreational resources of the state; to develop, operate and maintain or enter into leases or agreements with local governments for the operation and maintenance of outdoor recreational areas and facilities of the state, and to acquire lands, waters and interests in lands and waters for such areas and facilities.

(9) Apply to any appropriate agency or officer of the United States for participation by the department or a political subdivision of the state or the receipt of aid from any federal program respecting outdoor recreation. It may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable

officials and agencies to perform their duties under such programs. In connection with obtaining the benefits of any program, the park and recreation board shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development and maintenance of outdoor recreational resources and facilities.

(10) Obligate the state regarding the responsible management of any federal funds transferred to it for the purpose of any federal enactment and, in accordance with the exercise of this responsibility, the state hereby consents to be sued in any United States district court for the recovery of any federal funds that the responsible federal official, department or agency finds have been misused or disposed of contrary to the agreement with the federal official, department or agency or contrary to the provisions of federal enactment or applicable federal regulations.

(11) Cooperate and contract with and receive and expend aid, donations and matching funds from the government of the United States, receive and expend funds from the STORE and to receive and expend donations from other sources to acquire, develop, operate and maintain outdoor recreational areas and facilities of the state and, when authorized or directed by any act of congress or any rule or regulation of any agency of the government of the United States, to expend funds donated or granted to the state of Idaho by the federal government for such purposes.

Provided, however, the park and recreation board shall make no commitment or enter into any agreement pursuant to an exercise of authority under sections 67-4218, et seq., Idaho Code, until it has determined that sufficient funds are available to it for meeting the state's share, if any, of project costs. It is legislative intent that, to the extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of sections 67-4218, et seq., Idaho Code, such areas and facilities shall be publicly maintained for outdoor recreational purposes. The park and recreation board may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition and development projects involving participating federal-aid funds or state funds on behalf of any subdivision or subdivisions of this state. Provided, that the subdivision or subdivisions give necessary assurances to the park and recreation board that they have available sufficient funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision or subdivisions for public outdoor recreational use.

(12) Establish, develop, supervise and maintain through cooperative agreement, lease, purchase or other arrangement the Idaho recreation trail system, with the advice of the coordinator created in section 67-4233, Idaho Code, and consistent with the goals of recreation, transportation and public access to outdoor areas.

(13) Enter into agreements with cities, counties, recreation districts or other political subdivisions of the state to cost-effectively provide recreational facilities, opportunities and services to the citizens of the state.

(14) Have the authority to regulate firearm discharges in state parks for the protection of the public. However, this subsection (14) shall not apply to or affect a person discharging a firearm in the lawful defense of person, persons or property or to a person discharging a firearm in the course of lawful hunting. The possession or carrying of firearms is otherwise regulated by chapter 33, title 18, Idaho Code.

History.

1965, ch. 85, § 6, p. 139; am. 1972, ch. 65, § 6, p. 108; am. 1974, ch. 300, § 3, p. 1763; am. 1985, ch. 184, § 3, p. 470; am. 1988, ch. 253, § 5, p. 487; am. 1988, ch. 265, § 585, p. 549; am. 1993, ch. 286, § 3, p. 973; am. 1995,

ch. 40, § 1, p. 59; am. 1995, ch. 332, § 2, p. 1103; am. 1998, ch. 361, § 1, p. 1131; am. 2001, ch. 43, § 1, p. 80; am. 2002, ch. 225, § 2, p. 647; am. 2005, ch. 201, § 1, p. 609; am. 2006, ch. 229, § 2, p. 683; am. 2009, ch. 58, § 1, p. 162.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 58, changed

the designation scheme in the section from alpha to numeric and added subsection (14).

67-4223A. Idaho state parks passport program — Fee. — Upon payment of the fee as provided in section 49-402(12), Idaho Code, the purchaser shall be authorized to enter all Idaho state parks without paying the motor vehicle entrance fee for either a one (1) or two (2) year period of time, dependent on the fee paid by the purchaser. The provisions of this section shall not preclude the department from continuing to sell daily and annual motor vehicle entrance passes to Idaho residents who choose not to participate in the Idaho state parks passport program and to any nonresident visiting Idaho state parks.

History.

I.C., § 67-4223A, as added by 2012, ch. 41, § 3, p. 127; am. 2013, ch. 354, § 5, p. 962.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 354, updated the reference in the first sentence in light of the 2013 amendment of § 49-102.

Compiler's Notes.

S.L. 2013, Chapter 354 became law without the signature of the governor.

67-4247A. State trust fund for outdoor recreation enhancement — grant evaluation committee. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 3, effective April 3, 2012.

History.

I.C., § 67-4247A, as added by 1996, ch. 61, § 2, p. 178.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: "Legislative Intent. It is the intent of the Legislature to repeal statutes involving inac-

tive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be

made for the purposes of the Idaho Commemorative Silver Medallions as provided in Section 67-1223, Idaho Code, until the State

Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate."

CHAPTER 47

DEPARTMENT OF COMMERCE

SECTION.

- 67-4701. Department of commerce created.
- 67-4702. Authority and duties of the director.
- 67-4703. Powers and duties.
- 67-4704. Economic advisory council — Appointment of members — Qualifications.
- 67-4711. Definitions.
- 67-4712. Idaho travel and convention industry council — Created — Appointment of members.
- 67-4713. Members' qualifications — Term of office — Conflict of interest.
- 67-4723A. Idaho small business federal funding assistance act — Fund created.
- 67-4725. Idaho global entrepreneurial mission grant fund.
- 67-4726. Idaho global entrepreneurial mission council — Appointment of members — Qualifications.
- 67-4727. Nursing workforce advisory council

SECTION.

- Members — Officers — Compensation — Idaho nursing workforce center. [Null and void.]
- 67-4728. Film and television production business rebate fund. [Null and void, effective July 1, 2014.]
- 67-4729. Department of commerce and IGEM council rules and responsibilities.
- 67-4730. Idaho global entrepreneurial mission (IGEM) research.
- 67-4731. Commercialization revenue distribution.
- 67-4732. Idaho opportunity fund — Short title — Legislative intent.
- 67-4733. Director rulemaking authority.
- 67-4734. Idaho opportunity fund.
- 67-4735. Agreements required and disbursement of funds.
- 67-4736. Annual report by director.

67-4701. Department of commerce created. — There is hereby created in the executive branch of the government, a department of commerce, hereinafter referred to as the department, which shall have the duties, powers and authorities hereinafter provided.

Whenever in Idaho Code or elsewhere, reference is made to a predecessor department or agency of the department of commerce, other than the department of commerce and labor, it shall mean and hereafter be the department of commerce.

History.

1955, ch. 234, § 1, p. 521; am. 1974, ch. 22, § 3, p. 592; am. 1980, ch. 361, § 2, p. 937; am.

1985, ch. 160, § 4, p. 450; am. 2004, ch. 346, § 2, p. 1029; am. 2007, ch. 360, § 2, p. 1061.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, throughout the section, deleted "and labor" following "department of commerce"; and in the last paragraph, substituted "made to a predecessor

department of agency of the department of commerce, other than the department of commerce and labor" for "made to the department of commerce or the department of labor, or their predecessor departments or agencies."

67-4702. Authority and duties of the director. — (1) The director of the department of commerce, hereafter the director, shall administer the provisions of this chapter and perform such other duties relating to commerce as may be imposed upon him by law. The director shall have the authority to employ individuals, make expenditures, require reports, make

investigations, perform travel and take other actions deemed necessary. The director shall organize the department which shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government. The director shall have an official seal which shall be judicially noticed.

(2) The director shall have the authority pursuant to chapter 52, title 67, Idaho Code, to adopt, amend, or rescind rules as he deems necessary for the proper performance of all duties imposed upon him by law.

(3) Subject to the provisions of chapter 53, title 67, Idaho Code, the director is authorized and directed to provide for a merit system for the department covering all persons, except the director, the division administrators, and two (2) exempt positions to serve at the pleasure of the director.

(4) The director shall make recommendations for amendments to laws he is charged to implement as he deems proper.

(5) The director shall have all the powers and duties as may have been or could have been exercised by his predecessors in law, except those powers and duties granted and reserved to the director of the department of labor in titles 44, 45, 63 and 72, Idaho Code, and he shall be the successor in law to all contractual obligations entered into by his predecessors in law, except for those contracts of the department of labor, or contracts pertaining to any power or duty granted and reserved to the director of the department of labor in titles 44, 45, 63 and 72, Idaho Code.

(6) For the purposes of international trade, the director may use the title of secretary of the department.

History.

1947, ch. 269, § 33, p. 793; am. 1949, ch. 144, § 33, p. 252; am. 1951, ch. 104, § 7, p. 233; am. 1965, ch. 53, § 1, p. 86; am. 1974, ch. 16, § 3, p. 304; am. 1977, ch. 123, § 1, p. 262; am. 1987, ch. 312, § 1, p. 654; am. 1991, ch.

30, § 15, p. 58; am. 1996, ch. 421, § 2, p. 1406; am. 1998, ch. 1, § 43, p. 3; am. 1999, ch. 50, § 3, p. 112; am. and redesign. 2004, ch. 346, § 4, p. 1029; am. 2007, ch. 360, § 3, p. 1061; am. 2012, ch. 291, § 1, p. 805.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, in subsection (1), in the first sentence, deleted “and labor” following “department of commerce,” “the employment security law, chapter 13, title 72, Idaho Code, the minimum wage law, chapter 15, title 44, Idaho Code, the provisions of chapter 6, title 45, Idaho Code, relating to claims for wages, the provisions of section 44-1812, Idaho Code, relating to minimum medical and health standards for paid firefighters” following “provisions of this chapter,” and “labor and workforce development” following “commerce,” and deleted the former second sentence, which read: “The director

shall be the successor in law to the office enumerated in section 1, article XIII, of the constitution of the state of Idaho”; in subsection (3), deleted “two (2) deputy directors” following “except the director,” and substituted “two (2)” for “five (5)”; in subsection (4), deleted “the employment security law and other” following “amendments to”; and added the two exception clauses in subsection (5).

The 2012 amendment, by ch. 291, added subsection (6).

Effective Dates.

Section 2 of S.L. 2012, ch. 291 declared an emergency. Approved April 3, 2012.

67-4703. Powers and duties. — The department of commerce shall have the power and it shall be its duty to engage in advertising the state of Idaho, its resources, both developed and undeveloped, its tourist resources and attractions, its agricultural, mining, lumbering and manufacturing

resources, its health conditions and advantages, its scenic beauty and its other attractions and advantages; and in general either directly, indirectly or by contract do anything and take any action which will promote and advertise the resources and products of the state of Idaho, develop its resources and industries, promote tourist travel to and within the state of Idaho, and further the welfare and prosperity of its citizens.

The department shall also have the following duties when it deals with promoting economic development and tourism within the state:

(1) Survey and investigate the social, economic and physical resources of the state, including land, water, minerals, facilities for power, transportation, communications, recreation, health, education and other resources and facilities; endeavor to aid the legislature and the citizens of the state of Idaho in formulating a program for the development and utilization of these resources and facilities, and for balancing our agricultural, timber and mining economy with industrial capacity. It shall cooperate with local and regional agencies within the state. It shall cooperate with like agencies of other states, with agencies maintained by private persons or corporations, and with agencies established or employed by the United States to promote the development of the country and the welfare of its people.

(2) To develop and promote a comprehensive international marketing plan for Idaho's products.

(3) To collect and compile reliable data for general dissemination which will tend to the development of the state of Idaho by inducing people and capital to come within our borders.

(4) Keep accurate records and preserve all data collected by it, and from time to time prepare and submit to the governor and the legislature, reports, programs, recommendations and plans for the comprehensive, long-range development, conservation and use of all the resources of the state of Idaho. It shall make such special investigations as to resources, facilities, and other matters as may be required by the governor or the legislature.

(5) Coordinate those activities of local, state, federal and private agencies and departments when they deal with the promotion of Idaho's economic resources.

(6) To require and receive from the various executive departments and public officials of the state of Idaho such information as may be required by the division to enable it to fulfill its functions and carry out the purposes of this act.

(7) Administer and perform any other related functions or activities assigned by the governor or the legislature.

(8) Enter into interagency agreements with other state agencies in developing economic and community plans and programs.

(9) Provide technical assistance to other state agencies upon request.

(10) Contract with universities, consultants and other public and private agencies to develop plans and programs.

(11) Prepare a comprehensive economic development strategy.

(12) Petition for and receive moneys such as grants or gifts, to be used for state or local planning and economic development activities.

History.

1955, ch. 234, § 3, p. 521; am. 1974, ch. 22, § 5, p. 592; am. 1977, ch. 263, § 1, p. 770; am. 1980, ch. 361, § 4, p. 937; am. 1985, ch. 160,

§ 6, p. 426; am. 2004, ch. 346, § 5, p. 1029; am. 2007, ch. 360, § 4, p. 1061; am. 2011, ch. 99, § 1, p. 239.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 360, deleted “and labor” following “department of commerce” at the beginning of the first paragraph.

The 2011 amendment, by ch. 99, deleted former subsection (11), which read: “Serve as a clearinghouse for information, data, and

other materials which may be used in developing Idaho’s economy” and deleted former subsection (13), which read: “Collect and compile reliable economic data for general dissemination”; and redesignated former subsections (12) and (14) as present subsections (11) and (12), respectively.

67-4704. Economic advisory council — Appointment of members — Qualifications. — There shall be an economic advisory council to advise the department in the preparation and execution of plans, projects and programs in the furtherance of the power and duties conferred by section 67-4703, Idaho Code. The director shall consult, confer and advise with the advisory council in connection with all decisions concerning the administration and development of such plans, projects and programs. The approval of the advisory council shall be a condition precedent to the undertaking of action in the implementation of such plans, projects and programs by the department. The advisory council shall consist of seven (7) persons, who shall be appointed by and serve at the pleasure of the governor, and who shall serve for three (3) year terms. They shall serve and shall be compensated as provided by section 59-509(b), Idaho Code. One (1) person shall be appointed to represent each of the six (6) planning regions of the state and one (1) member shall serve in a statewide capacity. No more than four (4) members of the economic advisory council shall be from any one (1) political party.

History.

1955, ch. 234, § 4, p. 521; am. 1974, ch. 22, § 6, p. 592; am. 1980, ch. 247, § 85, p. 582; am. 1980, ch. 361, § 5, p. 937; am. 1985, ch.

160, § 7, p. 426; am. 2004, ch. 346, § 6, p. 1029; am. 2005, ch. 13, § 1, p. 39; am. 2013, ch. 102, § 1, p. 244.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 102, inserted “and serve at the pleasure of” in the fourth

sentence and rewrote the last sentence, which formerly read: “Membership shall be divided between political parties.”

67-4711. Definitions. — As used in sections 67-4710 through 67-4719, Idaho Code, unless the context requires otherwise:

(1) “Act” means sections 67-4710 through 67-4719, Idaho Code.

(2) “Campground” means any privately owned business which rents areas or places used for camping or parking campers, travel trailers, motorhomes or tents.

(3) “Council” means the state of Idaho travel and convention industry council.

(4) "Department" means the department of commerce.

(5) "Hotel/Motel" means an establishment which provides lodging to members of the public for a fee, and shall include condominiums, townhouses or any other establishment which makes a sale as herein defined.

(6) "Planning regions" means those seven (7) districts which shall be designated by number and shall embrace the several counties as follows:

No. 1. The counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.

No. 2. The counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.

No. 3. The counties of Adams, Canyon, Gem, Payette, Washington, Ada, Owyhee, Elmore, Boise and Valley.

No. 4. The counties of Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.

No. 5. The counties of Bannock, Caribou, Bear Lake, Franklin, Oneida, Power and Bingham.

No. 6. The counties of Clark, Jefferson, Fremont, Madison, Teton and Bonneville.

No. 7. The counties of Blaine, Camas, Lemhi, Custer and Butte.

(7) "Sale" means the renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days. "Sale" shall not include the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

History.

I.C., § 67-4711, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 11, p. 426; am. 1988, ch. 79, § 1, p. 137; am. 1988, ch.

174, § 1, p. 303; am. 1995, ch. 219, § 2, p. 762; am. 2005, ch. 13, § 2, p. 39; am. 2007, ch. 360, § 5, p. 1061.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, deleted

"and labor" following "department of commerce" in subsection (4).

67-4712. Idaho travel and convention industry council — Created — Appointment of members. — There is hereby created an advisory council to advise, as provided by this act, the department on matters related to the travel and convention industry. The council shall consist of eight (8) persons who shall be appointed by and serve at the pleasure of the governor. The term of office of members of the council shall be three (3) years commencing on January 1. An incumbent member whose term is scheduled to expire on July 1, 2012, shall serve until January 1, 2013.

History.

I.C., § 67-4712, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 12, p. 426;

am. 2005, ch. 13, § 3, p. 39; am. 2012, ch. 219, § 1, p. 600.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 219, inserted "and serve at the pleasure of" in the second

sentence, substituted "January 1" for "July 1" in the third sentence, and added the last sentence.

67-4713. Members' qualifications — Term of office — Conflict of interest. — (1) Members of the council shall be individuals actively involved in the state's travel and convention industry as a career or as an investment. Their selection shall be made with regard to their ability and disposition to serve the state's interest and their knowledge of the state's travel industry. There shall be one (1) member appointed from each of the seven (7) planning regions of the state and one (1) member shall serve in a statewide capacity.

(2) Members of the council may not serve more than two (2) consecutive terms, nor may they hold or file for any partisan elective political office while a member of the council.

(3) A member of the council may be removed if he is no longer a resident of the district from which he was appointed. Should a vacancy occur on the council, the governor shall appoint a person from the proper region to fulfill the remaining term of the vacant position.

(4) Any member of the council who has a direct interest in any grant application or proposal being considered by the council shall disclose such interest and shall refrain from voting on the application or proposal.

History.

I.C., § 67-4713, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 13, p. 426;

am. 1985, ch. 220, § 1, p. 532; am. 1988, ch. 79, § 2, p. 137; am. 2012, ch. 219, § 2, p. 600.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 219, inserted "consecutive" preceding "terms" in subsection

(2) and deleted "for inefficiency, neglect of duty, and misconduct in office or" following "may be removed" in subsection (3).

67-4723A. Idaho small business federal funding assistance act — Fund created. — (1) There is hereby created in the state treasury the Idaho small business assistance fund to which shall be credited all moneys that may be appropriated, apportioned, allocated, and paid back to the fund, including grants, federal moneys, donations, gifts, funds from any other source or otherwise provided by law. The moneys in the fund shall be used to reimburse Idaho small businesses for costs incurred in the process of developing and submitting federal grant proposals and to compete for awards. The Idaho department of commerce shall administer the fund.

(2) As used in this section:

(a) "Federal funding" means grants available to for-profit businesses as awarded by federal agencies through small business innovative research grants, small business technology transfer research grants, broad area announcements or other grant programs.

(b) "Small business" means an Idaho for-profit company with five hundred (500) or fewer employees.

(c) "State grants" means a grant award of up to four thousand dollars (\$4,000) limited exclusively to the reimbursement of claimable expenses incurred by an Idaho small business pursuant to the process of competing for federal funding awards.

(3) The department of commerce shall administer a program of state

grants to assist and incentivize new, emerging, and expanding Idaho small, for-profit businesses in the development of federal funding proposals that lead to the development of commercial products or services.

(4) The department of commerce shall administer this program in such a way as to avoid favoritism of any particular enterprise and to maximize the public purposes of increasing the number of submitted proposals from Idaho small businesses and increasing the number of grant awards to these businesses. Particular attention shall be paid to the encouragement of companies that have not competed for federal funding awards in the past.

History.

I.C., § 67-4723A, as added by 2011, ch. 224, § 2, p. 611.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2011, ch. 224 provided: “Legislative Intent — Short Title. The Legislature intends that an incentive for Idaho companies to commit private resources toward the process of attracting federal grants shall be provided through state grants that reimburse up to four thousand dollars. Small businesses that are reimbursed for expenses to submit a grant proposal which results in

winning a small federal grant award will agree to reimburse the state grant fund, and thereby help replenish the fund. Companies which win federal awards in excess of two hundred fifty thousand dollars will agree to reimburse the fund for up to five times the amount of their state grant. This act shall be known and may be cited as the ‘Idaho Small Business Federal Funding Assistance Act’.”

67-4725. Idaho global entrepreneurial mission grant fund. —

There is hereby created in the state treasury the Idaho global entrepreneurial mission grant fund hereafter known as the IGEN grant fund. Moneys in the fund shall consist of funds received pursuant to section 49-416C, Idaho Code, state appropriated general funds, commercialization revenues from state IGEN projects, grants, federal moneys, donations or funds from any other source. Moneys in the fund may be expended pursuant to appropriation. The fund balance in the fund may be appropriated annually to the department of commerce for the purpose of supporting the IGEN grants. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

History.

I.C., § 67-4725, as added by 2005, ch. 102,

§ 3, p. 321; am. 2009, ch. 162, § 2, p. 487; am. 2012, ch. 60, § 1, p. 160.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 162, rewrote the section catchline, which formerly read: “Office of science and technology fund”; in the first sentence, substituted “Idaho innovation fund” for “office of science and technology fund”; and, in the third sentence, substituted “department of commerce, commercial innovation division” for “office of science and technology.”

The 2012 amendment, by ch. 60, substi-

tuted “global entrepreneurial mission grant fund” for “innovation fund” in the section heading and in the first sentence; added “hereafter known as the IGEN grant fund” in the first sentence; inserted “state appropriated general fund, commercialization revenues from state IGEN projects” in the second sentence; and substituted “for the purpose of supporting the IGEN grants” for “commercial innovation division” in the fourth sentence.

67-4726. Idaho global entrepreneurial mission council — Appointment of members — Qualifications. — (1) The state of Idaho recognizes that the health and expansion of Idaho's future economy will depend upon taking full advantage of research and technology, and that Idaho has impressive resources for innovation-based growth, internationally recognized university research programs, globally competitive innovation companies and the Idaho national laboratory.

The IGEM council is hereby created to advise the department of commerce, the state board of education, state colleges and universities, and other state, local, federal and private sector agencies and organizations on innovation interests and potentials; to support the development and publishing of information on the condition and importance of innovation to the state's economy; to assist with the development and implementation of a state strategic plan for innovation; and to assist with the coordination of local, state and federal interests to increase the positive economic impact of the state's innovation resources.

(2) The council shall be appointed by and serve at the pleasure of the governor. Membership of the council shall include individuals knowledgeable and experienced in innovation issues. The council shall include: four (4) representatives from the private sector who have expertise in the transfer and commercialization of technology, the director of the department of commerce, one (1) member of the state board of education, one (1) representative from the Idaho national laboratory or the center for advanced energy studies, and one (1) representative each from Boise state university, Idaho state university and the university of Idaho. The president pro tempore of the senate and the speaker of the house of representatives, or their designees, shall serve as members of the council. The governor shall designate a chairman from the council's private-sector membership and the council shall designate such other officers from its membership as it deems necessary. The chairman, the director of the department of commerce and the state board of education member of the council shall serve as the executive committee of the council. The council shall be staffed and supported by the department of commerce. Members of the council who are not state employees shall be compensated for actual and necessary expenses as provided by section 59-509(b), Idaho Code.

History.

I.C., § 67-4726, as added by 2006, ch. 14, § 1, p. 34; am. 2007, ch. 360, § 6, p. 1061; am.

2009, ch. 162, § 3, p. 487; am. 2012, ch. 60, § 2, p. 160.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, deleted "and labor" following "department of commerce" throughout the section.

The 2009 amendment, by ch. 162, in the section catchline and in the first sentence in the second paragraph in subsection (1), substituted "Idaho innovation council" for "Science and technology advisory council"; throughout subsections (1) and (2), substi-

tuted "innovation" for "science and technology"; in the first paragraph in subsection (1), substituted "innovation-based" for "technology-based"; and, in subsection (2), deleted "science and" preceding "technology" in the second sentence, inserted "private-sector" in the third sentence, deleted "office of the" preceding "state board of education" in the fourth sentence, and added "commercial innovation division" in the fifth sentence.

The 2012 amendment, by ch. 60, substituted "global entrepreneurial mission council" for "innovation council" in the section heading; substituted "IGEM council" for

"Idaho innovation council" near the beginning of the second paragraph; and rewrote subsection (2).

67-4727. Nursing workforce advisory council — Members — Officers — Compensation — Idaho nursing workforce center. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2007, ch. 221 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2009."

This section was comprised of § 67-4727, as added by 2007, ch. 221, § 1, p. 663; am. 2008, ch. 27, § 18, p. 57.

67-4728. Film and television production business rebate fund. [Null and void, effective July 1, 2014.] — (1) There is hereby created in the state treasury the film and television production business rebate fund to which shall be credited all moneys that may be appropriated, apportioned, allocated, paid back to the fund, grants, federal moneys, donations, funds from any other source or otherwise provided by law. The purpose of the fund is to stimulate new film and television production business expenditures in the state of Idaho. Moneys in the fund shall be used exclusively as provided for in this section.

(2) As used in this section:

(a) "Applicant" means a taxpayer that is a film or television production business that is operating a qualified production and that:

(i) Owns the copyrights in a qualified production throughout the Idaho production period; or

(ii) Has contracted directly with the person acting on behalf of the copyright owner to provide services for the production where the copyright owner is not an eligible production company.

(b) "Base investment" means the investment made and expended by a certified production in Idaho as production expenditures incurred in Idaho that are directly used in a certified production or productions.

(c) "Certified production" means a qualified production selected by the department for a rebate from the fund.

(d) "Department" means the Idaho department of commerce.

(e) "Director" means the director of the Idaho department of commerce.

(f) "Fund" means the film and television production business rebate fund.

(g) "Production expenses" means those expenses eligible for a rebate from the fund and includes expenses for all production goods and services including wages and salaries, construction, operations, editing, photography, sound synchronization, lighting, makeup, wardrobe and accessories, rental facilities and equipment, leasing of vehicles, food and lodging, digital or tape editing, film processing, sound mixing, special and visual effects, and music, if performed, composed or recorded by a musician who is a resident of Idaho and other reasonable in-state expenditures as defined in departmental rule. Production expenses do not include mar-

keting and advertising costs, star salaries, producer and director salaries, script costs, any indirect costs, any amounts that are later reimbursed, any costs related to the transfer or rebates awarded under this section or any amounts that are paid to persons or entities as a result of their participation in profits from the production.

(h) "Qualified production" means a feature film, a television film, a commercial for a product or service, a documentary, a television pilot or each episode of a television series that spends a minimum of two hundred thousand dollars (\$200,000) on Idaho goods and services. A qualified production does not include a production featuring any of the following: news, current events, weather and market reports, public access television programming, infomercials, talk shows, game shows, sports shows or events, award shows or other gala events, a production that solicits funds, a production containing obscene material or a production primarily for private, political, industrial, corporate or institutional purposes.

(3) Moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be credited to the fund.

(4) Applicants may apply for a rebate from the fund by filling out an application and satisfying the department's criteria for a certified production prior to commencing work on the production. The rebate shall be calculated as a percentage of total base investment dollars certified by the department per project. The rebate shall be earned at the time expenditures are made by a film or television or commercial production business in a certified production.

(5) The director of the department may promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this section.

(6) The following is required for all certified productions: Beginning on and after July 1, 2008, and ending June 30, 2010, certified productions shall ensure to the department that twenty percent (20%) of the crew working in Idaho on a certified production are Idaho residents as verified by a state certified driver's license or identification card. Beginning on and after July 1, 2010, and ending on June 30, 2011, certified productions shall ensure to the department that twenty-five percent (25%) of the crew working in Idaho on a certified production are Idaho residents as verified by a state certified driver's license or identification card. Beginning on and after July 1, 2011, and ending on June 30, 2012, certified productions shall ensure to the department that thirty percent (30%) of the crew working in Idaho on a certified production are Idaho residents as verified by a state certified driver's license or identification card. Beginning on and after July 1, 2012, and ending on June 30, 2013, certified productions shall ensure to the department that thirty-five percent (35%) of the crew working in Idaho on a certified production are Idaho residents as verified by a state certified driver's license or identification card.

(7) The total amount of any rebate granted pursuant to this section may not exceed five hundred thousand dollars (\$500,000) nor twenty percent (20%) of a qualified production's expenses.

(8) Any rebate awarded from the fund shall be awarded pursuant to a written agreement between the applicant and the department.

(9) The department shall evaluate the economic impact of rebates awarded from the fund. The evaluation shall include an assessment of the effectiveness of the program in creating and retaining new jobs in Idaho and of the revenue impact of the fund, and may include a review of the practices and experiences of other states or nations with similar programs. Upon completion of this evaluation, the department shall determine the overall success of the fund and may make a recommendation to extend, modify or not extend the fund based on this evaluation. The department shall submit to the legislature during the 2014 regular legislative session a report that includes the following information:

- (a) The economic impact of the rebate fund, including the number of jobs created and retained, including whether the job positions are entry level, management, talent related, vendor related or production related;
- (b) The amount of film production spending brought to Idaho, including the amount of spending and type of Idaho vendors hired in connection with a certified production;
- (c) Identification of each vendor that provided goods or services that were included in a certified production's Idaho spending; and
- (d) The amount paid to each identified vendor by the certified production.

History.

I.C., § 67-4728, as added by 2008, ch. 350,
§ 1, p. 965; am. 2010, ch. 119, § 1, p. 265.

STATUTORY NOTES

Repealed effective July 1, 2014. Section 2 of S.L. 2008, ch. 350 provided "The provisions of this act shall be null, void and of no force and effect on and after July 1, 2014. On July 1, 2014, or as soon thereafter as is practicable, the State Controller is hereby directed to transfer any unexpended or

unobligated moneys remaining in the fund to the General Fund."

Amendments.

The 2010 amendment, by ch. 119, inserted "grants, federal moneys, donations, funds from any other source" in subsection (1).

67-4729. Department of commerce and IGEM council rules and responsibilities. — (1) The department of commerce in conjunction with the IGEM council shall:

- (a) Ensure that IGEM funds appropriated to the department of commerce and received for research and development at the universities and for the technology outreach program are used appropriately, effectively and efficiently in accordance with the intent of the legislature;
- (b) In conjunction with the IGEM research institutions and the private sector, evaluate best practices utilized by successful technology transfer programs and make recommendations to the IGEM research institutions for transaction and legal structures that incorporate those best practices;
- (c) Enhance technology transfer and commercialization of research and technologies developed at the universities to create high-quality jobs and new industries in the private sector in Idaho;
- (d) In conjunction with the university research departments and the

private sector, develop a standardized process for the transfer of intellectual property from all IGEM-funded research projects and for the IGEM grant awards;

(e) Establish economic development objectives for each IGEM state funded project;

(f) Establish rules for the IGEM grant program including weighted consideration for Idaho based entities and a matching requirement, monetary or otherwise, for recipients of the awards;

(g) Verify that the IGEM project is being enhanced by research grants and that it is meeting the economic development objectives of the department of commerce and the IGEM council;

(h) Monitor all research plans that are part of the project at the research universities to determine that appropriations are being spent in accordance with legislative intent and to measure the benefit and return to the state;

(i) Develop methods and incentives to encourage investment in and contributions to the IGEM project from the private sector; and

(j) Annually report and make recommendations to:

(i) The governor;

(ii) The joint finance-appropriations committee;

(iii) The house and senate commerce and human resource committees; and

(iv) The office of the state board of education.

(2) The department of commerce and the Idaho global entrepreneurial mission council may:

(a) In addition to moneys received by it from the legislature, receive contributions from any source in the form of money, property, labor or other things of value for the project;

(b) Subject to any restrictions imposed by the donation, appropriations or bond authorizations, allocate moneys received by it among the universities, technology outreach program and technology transfer offices to support commercialization and technology transfer to the private sector; or

(c) Enter into agreements necessary to obtain private equity investment in the project.

History.

I.C., § 67-4729, as added by 2012, ch. 60,
§ 3, p. 160.

67-4730. Idaho global entrepreneurial mission (IGEM) research.

— As funding becomes available from the legislature or other sources, and subject to any restrictions or directions established by the legislature, the state board of education and/or the department of commerce may allocate moneys to Boise state university, the university of Idaho and Idaho state university to provide funding for research teams or individual university research faculty to conduct IGEM-project designated research.

History.

I.C., § 67-4730, as added by 2012, ch. 60,
§ 4, p. 160.

67-4731. Commercialization revenue distribution. — For all revenue generated through the IGEN university research initiative and by IGEN funded research faculty the following is the priority of revenue distribution:

(a) The revenue shall first reimburse the costs associated with commercialization expenses generated by any of the three (3) universities.

(b) The university research faculty or IGEN university research teams shall be provided the prenegotiated portion of the commercialization revenue. The prenegotiated portion shall be determined by the universities collectively for those faculty involved in IGEN-funded research and individually by the employing university in all other situations.

(c) Remaining funds shall be distributed according to the following priorities:

(i) Up to twenty-five percent (25%) of the total remaining revenues shall reimburse the general fund for the current year expenses that were paid to support the IGEN research faculty teams or the IGEN research faculty that develop the commercialized product.

(ii) Up to five percent (5%) of the remaining revenues may be deposited into the IGEN grant funds to support IGEN grants. The amount shall be agreed to by the university/universities and the council prior to distribution.

(iii) The remaining funds shall be distributed to Boise state university, the university of Idaho and Idaho state university, with the moneys distributed based on the participation of the universities in the research project that generated the commercialization revenue.

History.

I.C., § 67-4731, as added by 2012, ch. 60,
§ 5, p. 160.

67-4732. Idaho opportunity fund — Short title — Legislative intent. — Sections 67-4732 through 67-4736, Idaho Code, shall be known and may be cited as the “Idaho Opportunity Fund Act” and also known as “this act.” The intent of the Idaho opportunity fund is to promote economic development and provide financial assistance, through the Idaho department of commerce, to retain, expand or attract quality jobs in industries deemed vital to the health of the local and statewide economy.

History.

I.C., § 67-4732, as added by 2013, ch. 106,
§ 1, p. 249.

67-4733. Director rulemaking authority. — The director shall promulgate rules pursuant to chapter 52, title 67, Idaho Code, in the furtherance of the objectives of this act.

History.

I.C., § 67-4733, as added by 2013, ch. 106,
§ 1, p. 249.

STATUTORY NOTES**Compiler's Notes.**

For meaning of "this act," see § 67-4732.

67-4734. Idaho opportunity fund. — There is hereby created in the state treasury the Idaho opportunity fund. Moneys in the Idaho opportunity fund may be expended by the Idaho department of commerce, pursuant to the provisions of this act, to assist in securing commitments for the retention and expansion of existing businesses and recruitment of new businesses.

(1) Moneys deposited in the fund. The following amounts shall be deposited in the fund:

- (a) Any amounts appropriated by the legislature for the fund for purposes described by this section;
- (b) Repayment of any moneys originally distributed from the fund that were improperly disbursed pursuant to the company performance agreement or the local government grant agreement; and
- (c) Gifts, grants and other donations received for the fund.

(2) Use of funds. Moneys in the Idaho opportunity fund may be allocated to local governments for any lawful purpose consistent with the intent of this act, which purposes shall include:

- (a) Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations;
- (b) Flood zone or environmental hazard mitigation; and
- (c) Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects.

History.

I.C., § 67-4734, as added by 2013, ch. 106,
§ 1, p. 249.

STATUTORY NOTES**Compiler's Notes.**

For meaning of "this act," see § 67-4732.

67-4735. Agreements required and disbursement of funds. —

(1) Funds may be disbursed from the Idaho opportunity fund only in accordance with this act and rules adopted by the department, and only in accordance with agreements entered into between the department and one (1) or more local governments, and agreements between the local government and a grantee business as set forth herein.

(2) Company performance agreements. An agreement between a local

government and a grantee business, in addition to any requirements in rules adopted by the department, may contain the following provisions:

- (a) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location;
- (b) A commitment regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained;
- (c) A commitment to complete the construction related to the agreed upon capital expenditures;
- (d) A provision that a reasonable percentage of the total amount of the grant be withheld until specified performance targets are met;
- (e) A provision that a reasonable percentage of the total amount of the grant be withheld until the specified number of jobs are maintained for a specified period of time;
- (f) A commitment to provide proof satisfactory to the local government and the director of new jobs created or existing jobs retained and the salary level of those jobs;
- (g) A provision that funds received under the agreement may be used only for a purpose as authorized by this act;
- (h) A provision allowing the director or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this act;
- (i) A provision establishing the method for determining compliance with the agreement;
- (j) A provision establishing a schedule for disbursement of funds under the agreement that allows disbursement of funds only in proportion to the amount of performance completed under the agreement;
- (k) A provision requiring repayment of grant funds and corresponding terms for repayment, if applicable, in the event a business subsequently fails to comply with the terms of the agreement;
- (l) A provision that any repayments of grant funds required if the performance targets are not achieved may be prorated to reflect a partial attainment of job creation or other performance targets; and
- (m) Any other lawful provision the director or the local government finds necessary to ensure the proper use of state or local funds.

(3) Local government grant agreement. An agreement between the department and one (1) or more local governments shall contain the following provisions:

- (a) A commitment on the part of the local government to match, in whole or in part, the funds allocated by the department. A local match may include, but shall not be limited to, money, fee waivers, in-kind services, donation of assets, the provision of infrastructure or a combination thereof. The director of the department of commerce shall have the authority to waive the local match requirement;
- (b) A provision requiring the local government to recapture any funds to which the local government is entitled under the company performance agreement;
- (c) A provision requiring repayment from the local government to the department for any funds used for unapproved purposes or disbursed

prior to compliance with the company performance agreement or achievement of the job creation or other performance targets;

(d) A provision allowing the department access to all records possessed by the local government necessary to ensure compliance with the company performance agreement and with the requirements of this act;

(e) A provision establishing a schedule for the disbursement of funds from the Idaho opportunity fund to the local government that reflects the disbursement schedule established in the company performance agreement; and

(f) Any other lawful provision the department deems necessary to ensure the proper use of state funds.

(4) Disbursement of funds. Funds may be disbursed from the Idaho opportunity fund to the local government only after the local government has demonstrated that the business has complied with the negotiated terms of the company performance agreement. The department shall disburse funds allocated under the Idaho opportunity fund to a local government in accordance with the disbursement schedule established in the local government grant agreement.

History.

I.C., § 67-4735, as added by 2013, ch. 106,
§ 1, p. 249.

STATUTORY NOTES

Compiler's Notes.

For meaning of "this act," see § 67-4732.

67-4736. Annual report by director. — The director of the department of commerce shall annually publish a report regarding the state of the Idaho opportunity fund and cause the same to be made available to the public. The report shall contain information on the commitment of funds, disbursement and use of funds, the number of jobs committed and created, the total capital expenditures resulting from grant funds and the median wage of total jobs created as result of grant funds distributed in the prior year. The report is due no later than the last day of September each year. The director shall also provide such report to the governor and the joint finance-appropriations committee during each regular session of the Idaho state legislature. In addition, the director of the department of commerce shall provide reports on the grant activity and performance to the economic advisory council on a quarterly basis during the year.

History.

I.C., § 67-4736, as added by 2013, ch. 106,
§ 1, p. 249.

CHAPTER 49

AUDITORIUM DISTRICTS

SECTION.

- 67-4907. Hearings on petitions — Election for organization and officers.
- 67-4911. Elections — Terms of office.
- 67-4922. Submission of proposition to electorate.
- 67-4923. Notice of election.

SECTION.

- 67-4924. Conduct of election — Canvass of returns.
- 67-4929. Inclusion or exclusion — Election procedure.
- 67-4930. Dissolution of district — Procedure.

67-4902. Definitions.

JUDICIAL DECISIONS

Purpose of Auditorium District.

An auditorium district must build, operate, maintain, market, and manage a public facility. An auditorium district cannot simply mar-

ket existing facilities within its borders. *AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium*, 146 Idaho 202, 192 P.3d 1026 (2008).

67-4904. Petition — Contents — Amendments.

JUDICIAL DECISIONS

Purpose of Auditorium District.

An auditorium district must build, operate, maintain, market, and manage a public facility. An auditorium district cannot simply mar-

ket existing facilities within its borders. *AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium*, 146 Idaho 202, 192 P.3d 1026 (2008).

67-4907. Hearings on petitions — Election for organization and officers. — On the day fixed for such hearing or at an adjournment thereof the court shall, if the petition proposes a property tax, ascertain from the tax rolls of the county or counties in which the district is located or into which it extends, the total number of taxpayers within the proposed district, who pay a general tax on real property owned by him or her within the district.

If the court finds that no petition has been signed and presented in conformity with this chapter, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceedings; but nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owner or owners of any real property within the proposed district may file a petition with the district court stating reasons why said property should not be included therein, why his land or any part thereof will not be benefited directly or indirectly by the proposed district, or should not be embraced in said district and made liable to taxation therefor, and praying that said property be excluded therefrom. Such petition shall be duly verified and shall describe

the property sought to be excluded. The court shall conduct a hearing on said petition and shall hear all objections to the inclusion in the district of any lands described in said petition. In case any owner of real estate included in said proposed district shall satisfy the court that his real estate, or any part thereof, has been wrongfully included therein or will not be benefited thereby then the court shall exclude such real estate as will not be benefited.

Upon said hearing, if it shall appear that a petition for the organization of a district has been signed and presented as hereinabove provided, in conformity with this chapter, and that the allegations of the petition are true, the court shall, by order duly entered of record, direct that the question of the organization of the district shall be submitted to the qualified electors of the district at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, and such order shall direct the county clerk to appoint election officials of the election. The county clerk of the county having jurisdiction shall give published notice of the time and place of an election to be held in the district.

Such election shall be held and conducted in accordance with the provisions of title 34, Idaho Code.

At any time after the filing of the petition herein referred to and before the day fixed for hearing, nominees for the board of directors of the district may be nominated by the filing of a petition designating the name or names of the nominee or nominees, signed by at least five (5) qualified electors of the district. If upon the hearing as herein provided the court shall order an election for the creation of the district, the court shall also ascertain the names of persons nominated by the board of directors, and shall order that the names of persons whom the court finds to have been properly nominated shall be listed upon a ballot submitted to the electors at such election. In the event the court makes its order providing for such election, it shall prescribe the form of the question and ballot relating to the election of the directors, provided that all matters may be contained upon one (1) ballot to be submitted to the voters.

At such election the voters shall vote for or against the organization of the district, and for five (5) qualified electors, who shall constitute the board of directors of the district, if organized, one (1) director to act until the first biennial election, two (2) until the second, and two (2) until the third biennial election.

The county board of canvassers shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at said election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which, in all proceedings, it shall thereafter be known, and designated the first board of directors elected, and thereupon the district shall be a governmental subdivision of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation except that districts formed prior to January 1, 1987, or districts with twenty-five thousand (25,000) or more population shall have no power to levy and collect property taxes.

If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such

order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Idaho, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty (30) days after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

History.

1959, ch. 137, § 7, p. 299; am. 1987, ch. 70, § 1, p. 129; am. 1995, ch. 118, § 91, p. 417;

am. 1998, ch. 21, § 3, p. 123; am. 2001, ch. 258, § 3, p. 926; am. 2009, ch. 341, § 148, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the fourth paragraph, in the first sentence, inserted "direct the county clerk to" and substituted "appoint election officials of the election" for "appoint three (3) qualified electors of the district as judges of said election" and, in the last sentence, substituted "county clerk of the county" for "clerk of the court"; in the fifth paragraph, substituted "conducted in accordance with the provisions of title 34, Idaho

Code" for "conducted in the same manner as general elections in this state"; and in the first sentence in the next-to-last paragraph, substituted "county board of canvassers" for "judges of election."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

67-4911. Elections — Terms of office. — On an election date as provided for in section 34-106(1), Idaho Code, in May of the first odd-numbered year after the organization of any district, and every second year thereafter, an election shall be held, which shall be known as the biennial election of the district.

At the first biennial election in any district hereafter organized, and each sixth year thereafter, there shall be elected by the qualified electors of the district, one (1) member of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years, and at the third biennial election, and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years. Provided, a member of the board once in office shall serve until his successor is elected, qualified and takes office.

Not later than 5:00 p.m. on the ninth Friday before any such election, nominations may be filed with the secretary of the board. The county clerk shall provide for holding such election and shall appoint judges to conduct it. The county clerk shall give notice of election by publication, and shall arrange such other details in connection therewith. Adequate polling places shall be provided throughout the district boundaries for all elections. The returns of the election shall be certified to and shall be canvassed and declared by the board of county commissioners which shall report the results to the district. The candidate or candidates, according to the number of directors to be elected, receiving the most votes, shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of directors to be elected, it shall not be necessary for the candidates to stand for election, and the board shall declare such candidates elected as directors, and the secretary of the board shall immediately make and deliver to such persons certificates of election signed by him and bearing the seal of the district.

History.

1959, ch. 137, § 11, p. 299; am. 1974, ch. 139, § 2, p. 1343; am. 1995, ch. 118, § 92, p.

417; am 1998, ch. 21, § 3, p. 123; am. 2001, ch. 258, § 4, p. 926; am. 2009, ch. 341, § 149, p. 993; am. 2011, ch. 11, § 26, p. 24.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the first paragraph, substituted “in November of the first odd-numbered year” for “in the second calendar year”; and in the third paragraph, in the second sentence, substituted “county clerk” for “board,” in the third sentence, substituted “county clerk” for “secretary of the district” and deleted “as the board may direct” from the end, and, in the fifth sentence, added “of county commissioners which shall report the results to the district.”

The 2011 amendment, by ch. 11, substituted “May” for “November” in the first para-

graph; and, in the first sentence of the third paragraph, substituted “ninth Friday” for “sixth Friday” and deleted “and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot” from the end.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

67-4912. General powers of board.

JUDICIAL DECISIONS

Purpose of Auditorium District.

An auditorium district must build, operate, maintain, market, and manage a public facility. An auditorium district cannot simply mar-

ket existing facilities within its borders. *AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium*, 146 Idaho 202, 192 P.3d 1026 (2008).

67-4922. Submission of proposition to electorate. — Whenever any board authorized to levy and collect property taxes shall, by resolution, determine that the interest of said district and the public interest or necessity demand the acquisition, construction, installation or completion of any works or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, public or private, municipalities, or governmental subdivisions, to carry out the objects or purposes of said district, requiring the creation of an indebtedness of seventy-five thousand dollars (\$75,000) or more, and in any event when the indebtedness will exceed the income and revenue provided for the year, said board shall order the submission of the proposition of issuing such obligations or bonds, or creating other indebtedness to the qualified electors of the district at an election held for that purpose. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity,

shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held, subject to the provisions of section 34-106, Idaho Code, and the manner of holding the same in accordance with the provisions of title 34, Idaho Code, and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall direct the county clerk to designate the polling place or places, and appoint judges of each polling place.

History. 1959, ch. 137, § 22, p. 299; am. 1974, ch. 139, § 3, p. 1343; am. 1987, ch. 70, § 14, p. 129; am. 1995, ch. 118, § 93, p. 417; am. 2009, ch. 341, § 150, p. 993.

STATUTORY NOTES

Amendments. The 2009 amendment, by ch. 341, in the first sentence, substituted “collect property taxes” for “collect ad valorem taxes”; in the third sentence, inserted “in accordance with the provisions of title 34, Idaho Code”; and rewrote the last sentence, which formerly read: “Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place or places, and shall appoint, for each polling place from the electors of the district, the officers of such election, consisting of three (3) judges, one (1) of whom shall act as clerk.”

Effective Dates. Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

67-4923. Notice of election. — The board of a district authorized to levy and collect property taxes shall prescribe the form of the notice of election, and direct the publication of the same, the first publication of said notice to be as prescribed in chapter 14, title 34, Idaho Code.

History. 1959, ch. 137, § 23, p. 299; am. 1987, ch. 70, § 16, p. 129; am. 1995, ch. 118, § 94, p. 417; am. 2009, ch. 341, § 151, p. 993.

STATUTORY NOTES

Amendments. The 2009 amendment, by ch. 341, substituted “collect property taxes” for “collect ad valorem taxes” and “said notice to be as prescribed in chapter 14, title 34, Idaho Code” for “said notice to be not less than twelve (12) days prior to the election and the second notice shall be not less than five (5) days prior to the election.”

Effective Dates. Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

67-4924. Conduct of election — Canvass of returns. — The county clerk shall conduct the election in the manner prescribed by the provisions of chapter 14, title 34, Idaho Code, and the returns thereof shall be canvassed and the results certified by the county clerk who shall report the results to the district.

History. 1959, ch. 137, § 24, p. 299; am. 1987, ch. 70, § 17, p. 129; am. 1995, ch. 118, § 95, p. 417; am. 2009, ch. 341, § 152, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

67-4929. Inclusion or exclusion — Election procedure. — Whenever under the provisions of sections 67-4918 and 67-4919, Idaho Code, owners or owners in fee of any real property have petitioned for inclusion or exclusion of property within the district, and the petition has been denied, the petitioners shall be entitled to an election as provided in this section:

(a) A petition may be filed with the county commissioners and shall be signed by not less than eighty percent (80%) of the qualified electors resident within the boundaries of the area proposed to be included or excluded.

(b) Within thirty (30) days after the filing of such petition, the county commissioners shall determine whether or not the same substantially complies with the requirements of this section. If the county commissioners find that there has not been substantial compliance with such requirements, they shall enter an order to that effect specifying the particular deficiencies and dismissing the petition. If the county commissioners find that there has been substantial compliance with such requirements, the county commissioners shall forthwith enter an order to the effect that the question of the inclusion or exclusion of property within the district be placed on the ballot at the next county general election.

(c) If the county commissioners order a question to be placed on the ballot as provided in this section, such election shall be conducted and notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code.

(d) Immediately after such election, the county commissioners shall canvass the vote as provided in chapter 12, title 34, Idaho Code. If one-half (1/2) or more of the votes cast at such election within the district are in favor of allowing the inclusion or exclusion, the county commissioners shall enter an order so finding and declaring that the boundaries of such district are revised as provided by the election. The county commissioners shall cause one (1) certified copy of such order to be filed in the office of the county recorder of such county. Immediately upon the entry of such order, the change in boundaries so ordered shall be complete.

(e) After such election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the inclusion or exclusion of such property after six (6) months has expired from the date of entering the order declaring the change in boundaries of such district.

(f) The provisions of section 67-4920, Idaho Code, relating to liability for indebtedness of included or excluded property of a district authorized to levy and collect property taxes shall apply to property included or excluded as provided in this section.

History.

I.C., § 67-4929, as added by 1975, ch. 154,

§ 1, p. 395; am. 1987, ch. 70, § 19, p. 129; am. 2009, ch. 341, § 153, p. 993.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 341, in subsection (c), substituted "notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code" for "notice thereof given as nearly as practicable in accordance with the manner of general elections in this state"; in subsection (d), combined and rewrote the first two sentences, which formerly read: "Immediately after such election, the judges at such election shall forward the

ballots and results of such election to the clerk. The county commissioners shall canvass the vote within ten (10) days after such election"; and, in subsection (f), substituted "collect property taxes" for "collect ad valorem taxes."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

67-4930. Dissolution of district — Procedure. — An auditorium district may be dissolved as follows:

(a) Any person or persons may file a petition for the dissolution of an auditorium district with the clerk. Such petition which may be in one (1) or more papers, shall state the name of the district and shall be signed by not less than three thousand (3,000) qualified electors resident within the boundaries of the district.

(b) Within thirty (30) days after the filing of such petition, the county commissioners shall determine whether or not the same substantially complies with the requirements of this section. If the county commissioners find that there has not been substantial compliance with such requirements, they shall enter an order to that effect specifying the particular deficiencies and dismissing the petition. If the county commissioners find that there has been substantial compliance with such requirements, the county commissioners shall forthwith enter an order to that effect and calling an election upon the dissolution of such district to be held at the same time as the next county general election, as provided in this section.

(c) If the county commissioners order an election as provided in this section, such election shall be conducted and notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code.

(d) Immediately after such election, the county commissioners shall canvass the vote as provided in chapter 12, title 34, Idaho Code. If one-half (1/2) or more of the votes cast at such election are against the dissolution of such district, the county commissioners shall enter an order so finding and declaring that such district shall not be dissolved. If more than one-half (1/2) of the votes cast at such election are in favor of dissolving such district, the county commissioners shall enter an order so finding and declaring such district duly dissolved. The county commissioners shall cause one (1) certified copy of such order to be filed in the office of the county recorder of such county. Immediately upon the entry of such order, the dissolution of such district shall be complete.

(e) Upon such dissolution being complete, title to all property of the dissolved district shall vest in the county where such property is situated. The county commissioners shall then: sell and dispose thereof in the manner provided by law for the sale or disposition of county property; apply the

proceeds thereof to pay any lawful claims against the dissolved district, if any; and apply the balance remaining, if any, to any public purpose within the county.

(f) When the boundaries of the district lie in two (2) or more counties, the county commissioners of each county shall act separately in the election and dissolution of that part of the district contained in their county but the county commissioners of each such county shall meet together before calling such election and provide for uniform proceedings in each county. If there is any balance remaining after sale and disposition of the property of such dissolved district, it shall be prorated among such counties in proportion to each county's share of the total assessed valuation of such dissolved district for the preceding calendar year.

(g) After such election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the dissolution of such district after six (6) months has expired from the date of entering the order declaring the dissolution of such district.

History.

I.C., § 67-4930, as added by 1975, ch. 154, § 2, p. 395; am. 2009, ch. 341, § 154, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (c), substituted "notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code" for "notice thereof given as nearly as practicable in accordance with the manner of general elections in this state"; in subsection (d), combined and rewrote the first two sentences, which formerly read: "Immediately after such election, the judges at such election shall forward the

ballots and results of such election to the clerk. The county commissioners shall canvass the vote within ten (10) days after such election"; and in the first sentence in subsection (e), substituted "title to all property" for "title of all property."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 50

COMMISSION ON AGING

SECTION.

67-5006. Definitions.

67-5006. Definitions. — For the purposes of this chapter, the following terms are defined as follows:

(1) "Transportation" — services designed to transport older persons to and from community facilities and resources for the purpose of applying for and receiving services, reducing isolation, or otherwise promoting independent living, but not including a direct subsidy for an overall transit system or a general reduced fare program for a public or private transit system.

(2) "In-home services" — provide care for older persons in their own homes and help them maintain, strengthen, and safeguard their personal

functioning in their own homes. These services shall include, but not be limited to case management, homemakers, chores, telephone reassurance, home delivered meals, friendly visiting and shopping assistance, and in-home respite care.

(3) "Congregate meals" — meals prepared and served in a congregate setting which provide older persons with assistance in maintaining a well-balanced diet, including diet counseling and nutrition education.

(4) "Older persons" — individuals sixty (60) years of age or older.

(5) "Adult day care" — a structured day program which provides individually planned care, supervision, social interaction and supportive services for frail older persons in a protective setting, and provides relief and support for caregivers.

(6) "Information and assistance service" means a service for older individuals that:

(a) Provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;

(b) Assesses the problems and capacities of the individuals;

(c) Links the individuals to the opportunities and services that are available;

(d) To the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures; and

(e) Serves the entire community of older individuals, particularly:

(i) Older individuals with the greatest social need;

(ii) Older individuals with the greatest economic need; and

(iii) Older individuals at risk for institutional placement.

(7) "Information and referral" means and includes information relating to assistive technology.

(8) "Aging and disability resource center" means an entity established by a state as part of the state system of long-term care, to provide a coordinated system for providing:

(a) Comprehensive information on the full range of available public and private long-term care programs, options, service providers and resources within a community, including information on the availability of integrated long-term care;

(b) Personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and

(c) Consumers' access to the range of publicly supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.

(9) "Case management service":

(a) Means a service provided to an older individual at the direction of the older individual or a family member of the individual:

(i) By an individual who is trained or experienced in the case manage-

ment skills that are required to deliver the services and coordination described in paragraph (b) of this subsection; and

(ii) To assess the needs and to arrange, coordinate and monitor an optimum package of services to meet the needs of the older individual; and

(b) Includes services and coordination such as:

(i) Comprehensive assessment of the older individual, including the physical, psychological and social needs of the individual;

(ii) Development and implementation of a service plan with the older individual to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services:

1. With any other plans that exist for various formal services such as hospital discharge plans; and

2. With the information and assistance services provided herein;

(iii) Coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided;

(iv) Periodic reassessment and revision of the status of the older individual with:

1. The older individual; or

2. If necessary, a primary caregiver or family member of the older individual; and

(v) In accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources.

History.

I.C., § 67-5006, as added by 1976, ch. 305,
§ 2, p. 1046; am. 1982, ch. 67, § 4, p. 131; am.

1989, ch. 117, § 2, p. 262; am. 2011, ch. 142,
§ 1, p. 402.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 142, substituted "this chapter" for "this act" in the intro-

ductory language and added subsections (6) through (8).

CHAPTER 51

JURISDICTION IN INDIAN COUNTRY

67-5101. State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country.

JUDICIAL DECISIONS

ANALYSIS

Motor vehicles.

—State highway system.

Motor Vehicles.

—State Highway System.

Defendant, a certified member of the Shoshone-Bannock tribes, was legally arrested and the district court of Bannock County has personal jurisdiction over him without the

need for extradition, where the defendant was stopped for driving under the influence on an interstate highway within the boundaries on an Indian reservation. State and tribal police share concurrent jurisdiction at the place of the arrest. *State v. Beasley*, 146 Idaho 594, 199 P.3d 771 (Ct. App. 2008).

CHAPTER 52

IDAHO ADMINISTRATIVE PROCEDURE ACT

SECTION.

67-5201. Definitions.

67-5202. Office of administrative rules coordinator.

67-5203. Publication of administrative bulletin.

67-5204. Publication of administrative code.

67-5205. Format — Costs — Distribution — Funds.

67-5220. Notice of intent to promulgate rules — Negotiated rulemaking.

67-5221. Public notice of proposed rulemaking. [Null and void, effective June 30, 2015.]

SECTION.

67-5223. Interim legislative review — Statement of economic impact.

67-5224. Pending rule — Final rule — Effective date. [Null and void, effective June 30, 2015.]

67-5226. Temporary rules.

67-5229. Incorporation by reference.

67-5243. Orders not issued by agency head.

67-5245. Review of preliminary orders.

67-5246. Final orders — Effectiveness of final orders.

67-5248. Contents of orders.

67-5273. Time for filing petition for review.

67-5201. Definitions. — As used in this act:

(1) “Administrative code” means the Idaho administrative code established in this chapter.

(2) “Agency” means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) “Agency action” means:

(a) The whole or part of a rule or order;

(b) The failure to issue a rule or order; or

(c) An agency’s performance of, or failure to perform, any duty placed on it by law.

(4) “Agency head” means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) “Bulletin” means the Idaho administrative bulletin established in this chapter.

(6) “Contested case” means a proceeding which results in the issuance of an order.

(7) “Coordinator” means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

(8) “Document” means any executive order, notice, rule or statement of policy of an agency.

(9) “Final rule” means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

(10) “License” means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.

(11) “Official text” means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.

(12) “Order” means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.

(13) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(14) “Pending rule” means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.

(15) “Person” means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(16) “Proposed rule” means a rule published in the bulletin as provided in section 67-5221, Idaho Code.

(17) “Provision of law” means the whole or a part of the state or federal constitution, or of any state or federal:

(a) Statute; or

(b) Rule or decision of court.

(18) “Publish” means to bring before the public by publication in the bulletin or administrative code, by electronic means or as otherwise specifically provided by law.

(19) “Rule” means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) Law or policy; or

(b) The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) Statements concerning only the internal management or internal

personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) Declaratory rulings issued pursuant to section 67-5232, Idaho Code; or

(iii) Intra-agency memoranda; or

(iv) Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(20) “Rulemaking” means the process for formulation, adoption, amendment or repeal of a rule.

(21) “Standard” means a manual, guideline, criterion, specification, requirement, measurement or other authoritative principle providing a model or pattern in comparison with which the correctness or appropriateness of specified actions, practices or procedures may be determined.

(22) “Submitted for review” means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code.

(23) “Temporary rule” means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code.

History.

1965, ch. 273, § 1, p. 701; am. 1980, ch. 213, § 1, p. 485; am. 1981, ch. 192, § 1, p. 338; am. 1986, ch. 318, § 1, p. 783; am. 1992, ch. 263,

§ 1, p. 783; am. 1993, ch. 216, § 101, p. 587; am. 1996, ch. 161, § 1, p. 529; am. 2000, ch. 203, § 3, p. 510; am. 2010, ch. 20, § 1, p. 33.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 20, inserted “by electronic means” after “administrative code” in subsection (18).

Compiler’s Notes.

Sections 1 through 5 of S.L. 2013, ch. 352 provide:

“1. Except as provided in Sections 2, 3 and 4 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 2013, pursuant to the provisions of subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 2014, at which time they shall expire as provided in Section 67-5292, Idaho Code.

“2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved or extended by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Sixty-second Idaho Legislature shall continue in full force and effect in such approved or extended language until July 1, 2014, at which

time they shall expire as provided in Section 67-5292, Idaho Code, or until such earlier time as provided in the rule or as otherwise provided by statute, unless further extended by statute.

“3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Sixty-second Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

“4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending or repealing rules which have been continued in full force and effect until July 1, 2014, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code, and subject to submission to the Legislature for approval. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal status than that of an administrative rule.

Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect have been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

JUDICIAL DECISIONS

ANALYSIS

Agency.

Agency head.

Contested case.

Agency.

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners did not violate the Idaho administrative procedure act, specifically § 67-5242, in not allowing the applicants to communicate with the board during its site visit; the county board of commissioners was not an "agency," as defined by this section; therefore, the requirements mandated by § 67-5242 were inapplicable. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

Agency Head.

Because the administrator of the division of motor vehicles is not the "agency head" of the Idaho transportation department, a memorandum decision by him is not a final, appealable order. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Contested Case.

Because the power to impose certain specific conditions upon an application for an

encroachment permit, including, but not limited to, provision of bonds and construction of traffic signals, is within the scope of the legislature's grant of authority to the transportation department to regulate the safe use of and access to controlled access highways, and because the department's denial or approval of the encroachment permit application determines the legal rights and interests of a property owner in accessing his property from a state highway and is, thus, an "order" under subsection (12), the department's review of the application was a "contested case" and judicial review of the department's action on the permit application is governed by § 67-5240. *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Cited in: *Archer v. Dep't of Transp.* (In re Archer), 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008); *Wheeler v. Idaho Transp. Dep't*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *McDaniel v. State* (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); *Wilkinson v. State*, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011).

67-5202. Office of administrative rules coordinator. — (1) There is hereby established the office of administrative rules coordinator in the department of administration. The coordinator shall be a nonclassified employee and shall be appointed by and serve at the pleasure of the director of the department of administration. All other employees of the office of administrative rules employed on July 1, 1996, shall be classified employees, but upon their termination their positions and any positions vacant upon July 1, 1996, shall be nonclassified positions and any persons employed to fill positions in the office of administrative rules thereafter shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.

(3) The coordinator shall receive all notices and rules required in this chapter to be published in the bulletin or the administrative code. The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all agencies. The coordinator shall review all submitted rules for style, form, and numbering, and may return a rule that is not in proper style, form, or number.

History.

I.C., § 67-5202, as added by 1992, ch. 263, § 2, p. 783; am. 1994, ch. 180, § 218, p. 420;

am. 1996, ch. 119, § 1, p. 433; am. 2008, ch. 183, § 1, p. 555.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 183, added the subsection (1) and (3) designations to the existing provisions and added subsection (2).

Effective Dates.

Section 3 of S.L. 2008, ch. 183 declared an emergency. Approved March 8, 2008.

67-5203. Publication of administrative bulletin. — (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published electronically in the bulletin. The bulletin shall be published electronically by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

- (a) All executive orders of the governor;
- (b) Agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and pending rules, together with any explanatory material supplied by the agency;
- (c) All agency documents required by law to be published in the bulletin; and
- (d) Any legislative documents affecting a final agency rule.

(5) The text of all documents published electronically in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published electronically in the bulletin.

History.

I.C., § 67-5203, as added by 1992, ch. 263, § 3, p. 783; am. 1993, ch. 216, § 102, p. 853;

am. 1993, ch. 245, § 1, p. 587; am. 1994, ch. 371, § 1, p. 1194; am. 1996, ch. 161, § 2, p. 529; am. 2010, ch. 21, § 1, p. 37.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 21, inserted “electronically” after “published” throughout

the section; and deleted former subsection (6) which read: “The coordinator shall provide a process for access to the contents of the bul-

letin and to the administrative code by electronic means.”

67-5204. Publication of administrative code. — (1) The administrative rules coordinator shall every year publish electronically a publication to be known as the “Idaho Administrative Code.”

(2) The administrative code shall be a codification of:

(a) All executive orders of the governor that have been published in the bulletin and have not been rescinded;

(b) The text of all final rules;

(c) Any legislative documents affecting a final agency rule; and

(d) All documents required by law to be published in the administrative code.

(3) The text of all documents published electronically in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published electronically in the administrative code.

History.

I.C., § 67-5204, as added by 1992, ch. 263, § 4, p. 783; am. 1993, ch. 216, § 103, p. 587;

am. 1996, ch. 161, § 3, p. 529; am. 2010, ch. 20, § 2, p. 33.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 20, in subsection (1), substituted “every year” for “annually” and inserted “electronically” after “pub-

lish”; and in subsection (3), inserted “electronically” after “published” in two places.

67-5205. Format — Costs — Distribution — Funds. — (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual electronic copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual electronic copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, and for rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of electronic copies which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free electronic copies shall be distributed by the coordinator, as follows:

(a) One (1) to each county clerk for the use of the county law library.

- (b) One (1) each to the senate and the house of representatives.
- (c) One (1) to the attorney general.
- (d) One (1) to the legislative services office.
- (e) One (1) each to the state universities and colleges, and one (1) to each community college.
- (f) One (1) to the state law library.
- (g) One (1) to the commission for libraries.
- (h) One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, The College of Idaho Library, Brigham Young University-Idaho Library and Twin Falls Public Library.

In addition to those free electronic copies required to be distributed by this section, the coordinator shall provide to the legislature free electronic copies of all rules subject to review by the legislature pursuant to section 67-5291, Idaho Code, and may distribute other free electronic copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code fund. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the fund. All agencies which have any material published electronically in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of such publication and distribution of such material. All moneys placed in the fund may be appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall charge an annual fee to each participating agency for each page published electronically in the administrative code not to exceed fifty-six dollars (\$56.00) per page. In addition, the coordinator shall charge a fee to each participating agency for each page published electronically in the bulletin not to exceed sixty-one dollars (\$61.00) per page. A fee per page may be charged even though less than a full page of publication is required, and each participating agency shall promptly pay into the administrative code fund such charge.

History.

I.C., § 67-5205, as added by 1992, ch. 263, § 6, p. 783; am. 1993, ch. 245, § 2, p. 853; am. 1994, ch. 371, § 2, p. 1194; am. 1996, ch. 159,

§ 23, p. 502; am. 1996, ch. 161, § 4, p. 529; am. 1996, ch. 162, § 1, p. 540; am. 2006, ch. 235, § 32, p. 701; am. 2008, ch. 13, § 2, p. 18; am. 2010, ch. 20, § 3, p. 33.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 13, substituted “The College of Idaho Library” for “Albertson College Library” in subsection (2)(h).

The 2010 amendment, by ch. 20, in the first sentence of subsection (1), substituted “electronic” for “printed pamphlet”; in the first sentence of subsection (2), inserted “electronic” after “individual”, deleted “for reprints and bound volumes thereof” after “and the bulletin”, deleted “pamphlet” before “rules and statements” and inserted “electronic” af-

ter “and the number of”; in the last sentence of subsection (2), inserted “electronic” after “Free”; in the last paragraph following subsection (2), inserted “electronic” after “free” in three places; in subsection (4), inserted “electronically” after “publish” in three places; and in the third sentence of subsection (4), inserted “such” after “the costs of”.

Effective Dates.

Section 3 of S.L. 2008, ch. 13 declared an emergency. Approved February 13, 2008.

67-5220. Notice of intent to promulgate rules — Negotiated rulemaking. — (1) Prior to the adoption, amendment or repeal of a rule, an agency shall determine whether negotiated rulemaking is feasible. The agency’s determination of whether negotiated rulemaking is feasible is not subject to judicial review. If the agency determines that negotiated rulemaking is feasible, it shall publish in the bulletin a notice of intent to promulgate a rule. The notice shall contain a brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking, and shall include the purpose of the rule, the statutory authority for the rulemaking, citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking, and the principal issues involved. The notice shall also state that interested persons have the opportunity to participate with the agency in negotiated rulemaking as provided in this section and shall identify an individual to whom comments on the proposal may be sent. If the agency determines that negotiated rulemaking is not feasible, it shall explain why negotiated rulemaking is not feasible in a notice of proposed rulemaking published pursuant to section 67-5221, Idaho Code, and shall proceed with rulemaking as provided pursuant to this chapter. Each agency that has a website shall cause the notice of intent to promulgate rules to be placed onto or accessible from the home page of the agency’s website.

(2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed through such informal rulemaking whenever it is feasible to do so in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking.

(3) To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:

- (a) Provide a reasonable period of time for interested persons to respond to the notice of intent to promulgate rules;
- (b) Provide notice of meetings to interested persons who responded to the notice of intent to promulgate rules;
- (c) Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the

formulation of the proposed rule and that is not exempt from disclosure pursuant to chapter 3, title 9, Idaho Code;

(d) Consider the recommendations of interested persons concerning the subject of the proposed rule;

(e) Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rule and make that information available to persons attending the negotiated rulemaking meeting;

(f) Prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking and make that summary available to persons who attended the negotiated rulemaking meetings.

History.

I.C., § 67-5220, as added by 1992, ch. 263, § 9, p. 783; am. 1994, ch. 271, § 1, p. 834; am. 2012, ch. 310, § 1, p. 856.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 310, added “Negotiated rulemaking” to the section heading; in subsection (1), added the first two sentences, substituted “If the agency determines that negotiated rulemaking is feasible, it shall” for “An agency may” at the beginning of the third sentence, inserted “also state that interested persons have the opportunity to participate with the agency in negotiated rulemaking as provided in this section and shall” in the fifth sentence and added the last two sentences; in subsection (2), substituted

“parties” for “persons” in the first sentence, substituted “agencies shall” for “agencies are encourage” and added “in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking”; and added subsection (3).

Effective Dates.

Section 2 of S.L. 2012, ch. 310 declared an emergency. Approved April 5, 2012.

67-5221. Public notice of proposed rulemaking. [Null and void, effective June 30, 2015.] — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

(a) The specific statutory authority for the rulemaking, including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

(b) A statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

(c) Except as otherwise required in paragraph (d) of this subsection, a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule;

(d) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater than

ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule;

(e) The text of the proposed rule prepared in legislative format;

(f) The location, date, and time of any public hearings the agency intends to hold on the proposed rule;

(g) The manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

(h) The manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code;

(i) The deadline for public comments on the proposed rule; and

(j) If negotiated rulemaking was not conducted, an explanation of the agency's determination that negotiated rulemaking was not feasible.

(2)(a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The notice shall be in the form of an official legal notice, as provided for in section 60-105, Idaho Code, and subject to the rates set forth therein.

The notice shall include the agency name and address, rule number, rule subject matter as provided in subsection (1)(b) of this section, and the comment deadline. The notice shall also include a brief statement that informs citizens where they can view the administrative bulletin in electronic form.

(b) The coordinator shall cause the notice required in subsection (2)(a) of this section to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published.

(3) Each agency that has a website shall cause the notice required by either subsection (1) or (2) of this section to be placed onto or be accessible from the home page of the agency's website so that interested persons can view it online.

History.

1965, ch. 273, § 3, p. 701; am. 1978, ch. 255, § 1, p. 556; am. 1980, ch. 44, § 1, p. 72; am. 1980, ch. 212, § 1, p. 481; am. 1981, ch. 192, § 2, p. 338; am. 1981, ch. 245, § 1, p. 489; am. 1983 (Ex. Sess.), ch. 4, § 1, p. 23; am. and redesign. 1992, ch. 263, § 10, p. 783; am. 1993,

ch. 216, § 105, p. 587; am. 1993, ch. 245, § 3, p. 853; am. 1994, ch. 271, § 2, p. 834; am. 1994, ch. 371, § 3, p. 1194; am. 1996, ch. 161, § 5, p. 529; am. 2005, ch. 129, § 1, p. 416; am. 2010, ch. 45, § 1, p. 82; am. 2012, ch. 310, § 2, p. 856; am. 2013, ch. 284, § 1, p. 732.

STATUTORY NOTES

Repealed effective June 30, 2015. Section 3 of S.L. 2013, ch. 284 provided: "The provisions of this act shall be null, void and of no force and effect on or after June 30, 2015."

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101.

Amendments.

The 2010 amendment, by ch. 45, in paragraph (2)(a), in the first paragraph, rewrote the second sentence, which formerly read: "The form of the notice shall be substantially as follows: typefaces used shall measure greater than seven (7) points, and space width shall not be less than two (2) newspaper columns", and deleted "The content of the notice shall be substantially as follows" from the end; in the second paragraph deleted the former first sentence, which read: "A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice", and rewrote the last sentence, which formerly read: "A brief state-

ment in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included"; and, in paragraph (2)(b), deleted the former last two sentences, which read: "The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing these notices which will provide adequate exposure to the notices by the least expensive means. For the purposes of this section, the provisions of section 60-105, Idaho Code, shall not apply."

The 2012 amendment, by ch. 310, added paragraph (1)(i) and subsection (3).

The 2013 amendment, by ch. 284, in paragraph (1)(c), added the exception at the beginning and substituted "paragraph" for "subsection" near the end; and added paragraph (1)(d) and redesignated the subsequent paragraphs accordingly.

Effective Dates.

Section 2 of S.L. 2012, ch. 310 declared an emergency. Approved April 5, 2012.

67-5223. Interim legislative review — Statement of economic impact. — (1) After notice of proposed rulemaking is filed with the coordinator, the coordinator, after making technical corrections as authorized in section 67-5202, Idaho Code, shall provide the notice, accompanied by the full text of the rule under consideration in legislative format, as well as a statement of the substance of the intended action, to the director of legislative services. If the proposed rulemaking is based upon a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of legislative services. The director of legislative services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.

(2) An agency shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a proposed rule if the germane joint subcommittee files a written request with the agency for such a statement. The statement shall contain an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits.

(3) An agency shall prepare for inclusion with the filing of the proposed rule change a statement of economic impact on all proposed rules in which a fee or charge is imposed or increased. The cost/benefit analysis shall include reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs borne by citizens, or the private sector or both. The adequacy of the contents of the statement of economic impact in subsections (1) and (2) of this section is not subject to judicial review and the accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

History.

I.C., § 67-5223, as added by 1992, ch. 263, § 13, p. 783; am. 1994, ch. 271, § 3, p. 834;

am. 1996, ch. 159, § 24, p. 502; am. 1999, ch. 21, § 2, p. 29; am. 2008, ch. 183, § 2, p. 555; am. 2010, ch. 280, § 1, p. 756.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 183, substituted "After notice of proposed rulemaking is filed with the coordinator, the coordinator, after making technical corrections as authorized in section 67-5202, Idaho Code, shall provide the same notice" for "At the same time that notice of proposed rulemaking is filed with the coordinator, the agency shall provide the same notice" at the beginning of subsection (1).

The 2010 amendment, by ch. 280, added the

subsection (3) designation, and therein added the first two sentences, and in the last sentence, inserted "in subsections (1) and (2) of this section" and added "and the accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule."

Effective Dates.

Section 3 of S.L. 2008, ch. 183 declared an emergency. Approved March 18, 2008.

67-5224. Pending rule — Final rule — Effective date. [Null and void, effective June 30, 2015.] — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.

(2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of a pending rule and a notice of adoption of the pending rule in the bulletin. The notice of adoption of the pending rule shall consist of a concise explanatory statement containing:

- (a) Reasons for adopting the rule;
- (b) A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes;
- (c) The date on which the pending rule will become final and effective, as provided in subsection (5) of this section, and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- (d) An identification of any portion of the pending rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) The specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) Except as otherwise required in paragraph (g) of this subsection, a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule; or
- (g) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater than

ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule.

(3) With the permission of the coordinator, the agency need not publish in full the text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and note all changes that have been made.

(4) An agency shall not publish a pending rule until at least seven (7) days after the close of all public comment.

(5)(a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves, amends or modifies a pending rule pursuant to section 67-5291, Idaho Code, the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.

(c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved, amended or modified by concurrent resolution.

(6) Each agency shall provide the administrative rules coordinator with a description of any pending rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.

(7) At the conclusion of the legislative session or as soon thereafter as is practicable, the coordinator shall publish the date upon which the legislature adjourned sine die and rules became effective and a list of final rules becoming effective on a different date, as provided in section 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided in section 67-5226(3), Idaho Code.

History.

I.C., § 67-5224, as added by 1992, ch. 263, § 14, p. 783; am. 1995, ch. 196, § 1, p. 686;

am. 1996, ch. 161, § 6, p. 529; am. 1999, ch. 20, § 1, p. 28; am. 2005, ch. 220, § 1, p. 696; am. 2013, ch. 284, § 2, p. 732.

STATUTORY NOTES

Repealed effective June 30, 2015. Section 3 of S.L. 2013, ch. 284 provided: "The

provisions of this act shall be null, void and of no force and effect on or after June 30, 2015."

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101.

Amendments.

The 2013 amendment, by ch. 284, in para-

graph (2)(f), added the exception at the beginning and substituted "paragraph" for "subsection" near the end; and added paragraph (2)(g) and redesignated the subsequent paragraphs accordingly.

67-5226. Temporary rules. — (1) If the governor finds that:

- (a) Protection of the public health, safety, or welfare; or
- (b) Compliance with deadlines in amendments to governing law or federal programs; or
- (c) Conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved, amended or modified by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in section 67-5224(5), Idaho Code.

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code, provided that the administrative rules coordinator sends a copy of the temporary rules to the director of the legislative services office.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

History.

I.C., § 67-5226, as added by 1992, ch. 263, § 16, p. 783; am. 1995, ch. 196, § 2, p. 686;

am. 1996, ch. 161, § 7, p. 529; am. 2000, ch. 203, § 2, p. 510; am. 2003, ch. 22, § 1, p. 92; am. 2010, ch. 20, § 4, p. 33.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 20, in subsec-

tion (5), deleted "the agency adopting the temporary rule sends to the director of legis-

lative services a copy of the temporary rule at the same time the agency sends the temporary rule to the office of” after “provided that” and substituted “sends a copy of the temporary rules to the director of the legislative services office” for “for publication in the bulletin.”

67-5229. Incorporation by reference. — (1) If the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of:

- (a) A code, standard or rule adopted by an agency of the United States;
- (b) A code, standard or rule adopted by any nationally recognized organization or association;
- (c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or
- (d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.

(2) The agency shall, as part of the rulemaking:

- (a) Include in the notice of proposed rulemaking a brief written synopsis of why the incorporation is needed; and
- (b) Note where an electronic copy can be obtained or provide an electronic link to the incorporated materials that at a minimum will be posted on the agency’s website or included in the rule that is published in the administrative code on the website of the office of the administrative rules coordinator; and
- (c) If otherwise unavailable, note where copyrighted or other proprietary materials can be viewed or purchased.

(3) The incorporated material shall be identified with specificity and shall include the date when the code, standard or rule was published, approved or became effective. If the agency subsequently wishes to adopt amendments to previously incorporated material, it shall comply with the rulemaking procedures of this chapter.

(4) Unless prohibited by other provisions of law, the incorporated material is subject to legislative review in accordance with the provisions of section 67-5291, Idaho Code, and shall have the same force and effect as a rule.

History.

I.C., § 67-5203A, as added by 1980, ch. 212, § 2, p. 481; am. and redesign. 1992, ch. 263,

§ 19, p. 783; am. 2000, ch. 203, § 1, p. 510; am. 2010, ch. 280, § 2, p. 756.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 280, added paragraph (2)(a) and made related redesignations; rewrote present paragraph (2)(b), which formerly read: “Note where copies of the incorporated material may be ob-

tained or electronically accessed”; and rewrote present paragraph (2)(c), which formerly read: “If otherwise unavailable, provide one (1) copy of the incorporated material to the Idaho supreme court law library.”

67-5240. Contested cases.**JUDICIAL DECISIONS****Definition.**

Because the power to impose certain specific conditions upon an application for an encroachment permit, including, but not limited to, provision of bonds and construction of traffic signals, is within the scope of the legislature's grant of authority to the transportation department to regulate the safe use of and access to controlled access highways, and because the department's denial or approval of the encroachment permit application determines the legal rights and interests

of a property owner in accessing his property from a state highway and is, thus, an "order" under § 67-5201 (12), the department's review of the application was a "contested case" and judicial review of the department's action on the permit application is governed by this section. *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Cited in: *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

67-5241. Informal disposition.**JUDICIAL DECISIONS**

Cited in: *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

67-5242. Procedure at hearing.**JUDICIAL DECISIONS****ANALYSIS**

Applicability.
Notice.

Applicability.

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners did not violate the Idaho administrative procedure act, specifically this section, in not allowing the applicants to communicate with the board during its site visit; the county board of commissioners was not an agency, as defined by § 67-5201; therefore, the requirements mandated by this section were inapplicable. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

Notice.

Although the organizations argued that the Idaho lottery commission never charged them with failing to keep checks, but merely with failing to provide documents, the notice was sufficient to satisfy the requirements of due process and Idaho Administrative Procedure Act by providing a short and plain statement of the matters asserted or the issues involved. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

67-5243. Orders not issued by agency head. — (1) If the presiding officer is not the agency head, the presiding officer shall issue either:

- (a) A recommended order, which becomes a final order only after review by the agency head in accordance with section 67-5244, Idaho Code; or
- (b) A preliminary order, which becomes a final order unless reviewed in accordance with section 67-5245, Idaho Code.

(2) The order shall state whether it is a preliminary order or a recommended order.

(3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order

within fourteen (14) days of the service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

History.

I.C., § 67-5243, as added by 1992, ch. 263,
§ 27, p. 783; am. 2010, ch. 255, § 1, p. 646.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 255, substituted "within fourteen (14) days of the service

date of that order" for "within fourteen (14) days of the issuance of that order" in subsection (3).

67-5245. Review of preliminary orders. — (1) A preliminary order shall include:

- (a) A statement that the order will become a final order without further notice; and
 - (b) The actions necessary to obtain administrative review of the preliminary order.
- (2) The agency head, upon his own motion may, or, upon motion by any party shall, review a preliminary order, except to the extent that:

- (a) Another statute precludes or limits agency review of the preliminary order; or
- (b) The agency head has delegated his authority to review preliminary orders to one (1) or more persons.

(3) A petition for review of a preliminary order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within fourteen (14) days after the service date of the preliminary order unless a different time is required by other provision of law. If the agency head on his own motion decides to review a preliminary order, the agency head shall give written notice within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provisions of law. The fourteen (14) day period for filing of notice is tolled by the filing of a petition for reconsideration under section 67-5243(3), Idaho Code.

(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to file exceptions to the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

- (a) Issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;
- (b) Remand the matter for additional hearings; or
- (c) Hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing.

History.

I.C., § 67-5245, as added by 1992, ch. 263,
§ 30, p. 783; am. 2010, ch. 255, § 2, p. 646.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 255, substituted "after the service date of the preliminary order" for "after the issuance of the preliminary order" in the first sentence in subsection (3).

67-5246. Final orders — Effectiveness of final orders. — (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) The petition for reconsideration is disposed of; or

(b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

History.

I.C., § 67-5246, as added by 1992, ch. 263,
§ 31, p. 783; am. 2010, ch. 255, § 3, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, in sub-

sections (4) and (5), substituted “service date” for “issuance.”

JUDICIAL DECISIONS

ANALYSIS

Judicial review.
Motion for reconsideration.

Judicial Review.

Because the administrator of the division of motor vehicles is not the “agency head” of the Idaho transportation department, a memorandum decision by him is not a final, appealable order. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Motion for Reconsideration.

Under subsection (4), a petition for reconsideration is not disposed of until there is a decision on the merits of the petition. Agreement to consider the petition within that timeframe is not sufficient. Where irrigation district filed its petition for reconsideration on May 11, 2011, the department of water resources had twenty-one days from that date (until June 1, 2011) within which to decide the petition on the merits. Because the department’s director did not issue a written decision disposing of the petition for reconsideration by June 1, 2011, the petition was deemed denied. *A&B Irrigation Dist. v. Idaho Dep’t of Water Res.*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 196 (Sept. 14, 2012).

Cited in: *Erickson v. Idaho Bd. of Registration*, 146 Idaho 852, 203 P.3d 1251 (2009).

67-5248. Contents of orders. — (1) An order must be in writing and shall include:

(a) A reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.

(b) A statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.

(2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

(3) All parties to the contested case shall be served with a copy of the order. The order shall be accompanied by proof of service stating the service date, each party who was served and the method(s) of service.

History.

1965, ch. 273, § 12, p. 701; am. and redesign.

1992, ch. 263, § 33, p. 783; am. 2010, ch. 255, § 4, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, in subsection (3), substituted “shall be served” for

“shall be provided” and added the last sentence.

JUDICIAL DECISIONS

Findings of Fact.

City failed to properly make factual findings where they did not determine any facts, but only made recitations of evidence which could be used to support a finding without an

affirmative statement that the agency was finding the fact testified to. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

67-5251. Evidence — Official notice.

JUDICIAL DECISIONS

Hearsay.

Although the industrial commission had the discretionary power to consider any type of reliable evidence having probative value, even if that evidence was not admissible in a court of law, the commission was given latitude to determine whether to admit hearsay evidence and was thus free to exclude hearsay testimony by a claimant's coworker. *Higgins v. Larry Miller Subaru-Mitsubishi*, 145 Idaho 1, 175 P.3d 163 (2007).

Cited in: *Kootenai Med. Ctr. v. Idaho Dep't of Health & Welfare*, 147 Idaho 872, 216 P.3d 630 (2009); *Wheeler v. Idaho Transp. Dep't*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *Masterson v. Idaho DOT (In re Masterson)*, 150 Idaho 126, 244 P.3d 625 (Ct. App. 2010); *Bell v. Idaho Transp. Dep't (In re Bell)*, 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011).

67-5252. Presiding officer — Disqualification.

JUDICIAL DECISIONS

Presiding Officer.

Neither statutes nor regulations require hearing officers who are attorneys to possess any experience or expertise in the issue in-

involved in a hearing. *Rammell v. Idaho State Dep't of Agric.*, 147 Idaho 415, 210 P.3d 523 (2009).

67-5255. Declaratory rulings by agencies.

JUDICIAL DECISIONS

Cited in: *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853 (2008).

67-5270. Right of review.

JUDICIAL DECISIONS

ANALYSIS

Contested case.

Exhaustion.

Final order.

Party.

Subject matter jurisdiction.

Contested Case.

District court lacked jurisdiction to review oversize load permits issued by the transportation department, because subsection (2) of this section does not provide jurisdiction to challenge an order in a contested case, even where the contested case is conducted under

informal procedures. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Exhaustion.

Section 23-933 does not prescribe a process for dealing with removal of an applicant from a priority list and, therefore, presents no

administrative remedy to exhaust before seeking judicial redress of the administrative action. *Fuchs v. State*, Dep't of Ida. State Police, 152 Idaho 626, 272 P.3d 1257 (2012).

Final Order.

Because there was no final order from the real estate appraiser board in the administrative proceedings against the appraiser, the appraiser's appeal was dismissed. An order denying a motion to dismiss is not a final order. *Williams v. Bd. of Real Estate Appraisers* (In re Williams), 149 Idaho 675, 239 P.3d 780 (2010).

Party.

Where residents sent a number of written comments and objections to the transportation department to oppose a refiner's application for an overlegal permit, but never filed as intervenors or any other kind of party during the application and hearing process, the residents were not parties entitled to judicial review under subsection (3) of this section. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

67-5271. Exhaustion of administrative remedies.

JUDICIAL DECISIONS

ANALYSIS

Exceptions.
Purpose.

Exceptions.

Where a developer filed suit for judicial review of the Idaho transportation department's (ITD) action on an encroachment permit approved with conditions, the developer was not required to exhaust his administrative remedies under this section before seeking review of the ITD's order, because the ITD's rules did not provide a mechanism whereby an applicant, whose permit application had been approved subject to conditions, could challenge those conditions. *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Section 23-933 does not prescribe a process for dealing with removal of an applicant from a priority list and, therefore, presents no administrative remedy to exhaust before seeking judicial redress of the administrative

Subject Matter Jurisdiction.

District court and appellate court lacked subject matter jurisdiction to consider the driver's petition for judicial review, because the driver's petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver's filing of the petition for judicial review. *Johnson v. State* (In re Johnson), 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Cited in: *Archer v. Dep't of Transp.* (In re Archer), 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008); *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009); *Wheeler v. Idaho Transp. Dep't*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *McDaniel v. State* (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); *Burton v. State*, 149 Idaho 746, 240 P.3d 933 (Ct. App. 2010); *Wilkinson v. State*, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011).

action. *Fuchs v. State*, Dep't of Ida. State Police, 152 Idaho 626, 272 P.3d 1257 (2012).

Purpose.

The exhaustion doctrine, codified in this section, flows from a number of important policy considerations, such as, providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative processes established by the legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Cited in: *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

67-5273. Time for filing petition for review. — (1) A petition for judicial review of a temporary or final rule may be filed at any time, except as limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-

5271(2), Idaho Code, must be filed within twenty-eight (28) days of the service date of the final order, the date when the preliminary order became final, or the service date of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the service date of the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

History.

I.C., § 67-5273, as added by 1992, ch. 263, § 45, p. 783; am. 1993, ch. 216, § 110, p. 587;

am. 1995, ch. 270, § 5, p. 868; am. 1996, ch. 161, § 11, p. 529; am. 2010, ch. 255, § 5, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, in the first sentence in subsection (2), twice substi-

tuted "service date" for "issuance" and inserted "the service date of" preceding "the decision."

JUDICIAL DECISIONS

ANALYSIS

Not untimely.

Not timely.

Not Untimely.

Appeal from the granting of a livestock confinement permit should not have been dismissed as untimely because county commissioners caused confusion regarding the 28-day time period in their decision, and it was reasonable for an objector to read the decision as setting a certain date as the final date of appeal. *Halper v. Jerome County*, 143 Idaho 691, 152 P.3d 562 (2007).

Not Timely.

Where a final order of the board was issued, after which there was a motion for reconsideration, the ruling on which also was captioned "Final Order", the time for appeal began to run when the first order was issued, not when it was served, and not when the order disposing of the motion for reconsideration was issued. *Erickson v. Idaho Bd. of*

Registration, 146 Idaho 852, 203 P.3d 1251 (2009).

City's petition for judicial review was untimely because the twenty-eight day appeal period began to run when the Department of Water Resources issued the original Order on Reconsideration; the department clearly stated the date that the order was issued. *City of Eagle v. Idaho Dep't of Water Res.*, 150 Idaho 449, 247 P.3d 1037 (2011).

District court and appellate court lacked subject matter jurisdiction to consider the driver's petition for judicial review, because the driver's petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver's filing of the petition for judicial review. *Johnson v. State (In re Johnson)*, 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

67-5276. Additional evidence.**JUDICIAL DECISIONS****ANALYSIS**

Public record.
Timeliness.
When permitted.

Public Record.

In appeal of city council's decision to deny development application, district court erred in ordering augmentation of record over the objection of the city. That the evidence added was a matter of public record was irrelevant, as it was not part of the agency record below. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Timeliness.

In appeal of city council's decision to deny development application, district court erred in ordering augmentation of record over the objection of the city, where developer's request for augmentation was only made at the hearing, and thus was untimely. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Landowner's motion to augment the record was properly denied, where the landowner not only failed to make the request until after the hearing, it was not made until after the

decision on the petition. *Spencer v. Kootenai County*, 145 Idaho 448, 180 P.3d 487 (2008).

When Permitted.

Judicial review of a county board of commissioners' decision is generally confined to the board record unless the party requesting the additional evidence can demonstrate that the evidence falls within the statutory exceptions provided for in this section. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

Where parties appealing an agency decision presented no evidence in support of their motion to augment the record that would support a finding that there were irregularities in procedure before the agency, no additional evidence should have been allowed. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

Cited in: *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853 (2008).

67-5277. Judicial review of issues of fact.**JUDICIAL DECISIONS****Public Record.**

In appeal of city council's decision to deny development application, district court erred in ordering augmentation of record over the objection of the city. That the evidence added was a matter of public record was irrelevant, as it was not part of the agency record below. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Cited in: *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 154 P.3d 433 (2007); *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007); *Idaho Power Co. v. Idaho Dep't of Water Res. (In re Licensed Water Right No. 03-7018)*, 151 Idaho 266, 255 P.3d 1152 (2011).

67-5278. Declaratory judgment on validity or applicability of rules.**JUDICIAL DECISIONS**

Cited in: *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 154 P.3d 433 (2007).

67-5279. Scope of review — Type of relief.**JUDICIAL DECISIONS****ANALYSIS**

Abuse of discretion.
 Agency.
 Authority of court.
 Burden of proof.
 Conditional rezone.
 Due process.
 Land use planning.
 Remand unnecessary.
 Standard of review.
 Substantial evidence.
 Violation of substantial right.

Abuse of Discretion.

Denial of a third party medical indigency application was set aside as an abuse of discretion because the county failed to carry out its investigative duties by conducting only a minimal investigation and failing to issue a subpoena to the patient; the investigative duties were not alleviated simply because the patient refused to cooperate. *University of Utah Hosp. v. Ada County Bd. of Comm'rs*, 143 Idaho 808, 153 P.3d 1154 (2007).

Idaho board of professional counselor and marriage and family therapists acted without substantial evidence in concluding that therapist violated two provisions of the ethics code where it departed from its hearing officer's determination that the therapist's testimony as to her subjective intent was more credible than that submitted by the board's witness, but never explained its reasons for doing so. *Ater v. Idaho Bureau of Occupational Licenses*, 144 Idaho 281, 160 P.3d 438 (2007), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

City unreasonably interpreted its ordinances when it determined that the applicant failed to submit the necessary application for consideration of its request to construct a private road; the city automatically assumed that the applicant's request was another attempt to build a subdivision, and the city's interpretation of the code was unreasonable and, thus, an abuse of discretion. *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 175 P.3d 776 (2007).

Agency.

A board of county commissioners is not a state agency for purposes of application of the Idaho administrative procedures act, § 67-5201 et seq., in its totality. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Authority of Court.

Actions seeking civil damages or declaratory relief could not be combined with peti-

tions for judicial review; trust's actions were treated as a civil action only, based upon the filing fee category used in bringing the actions. *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853 (2008).

Most of the issues raised in this action were decided in an earlier decision approving a conditional use permit, which was a final decision from which no appeal was taken. *Johnson v. Blaine County*, 146 Idaho 916, 204 P.3d 1127 (2009).

District court and appellate court lacked subject matter jurisdiction to consider the driver's petition for judicial review, because the driver's petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver's filing of the petition for judicial review. *Johnson v. State (In re Johnson)*, 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Burden of Proof.

It is the burden of the party contesting an agency's decision to show how the agency erred in a manner specified under this section and to establish that a substantial right has been prejudiced. *Wheeler v. Idaho Dep't of Health & Welfare*, 147 Idaho 257, 207 P.3d 988 (2009).

Conditional Rezone.

Plaintiffs' argued that the board of county commissioner's approval of a conditional rezoning frustrated the purposes listed under § 67-6502 (f) and (g); however plaintiffs did not provide support to show how the rezoning discouraged urban and urban-type development within incorporated cities, or how it failed to promote the avoidance of undue concentration of population and overcrowding of land, and, thus, failed to show how the board erred under the terms of this section. *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

Due Process.

Upholding a city council's denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission's prior approval, the appellate court held that the council retained the right to review decisions of the commission *de novo*, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Land Use Planning.

While a single hearing examiner could conduct a land use planning hearing if authorized by local ordinance, where the applicable ordinance specifically called for a five-member appeal board, the county employed unlawful procedure. However, although the initial hearing was held upon unlawful procedure, the landowner's substantial rights had not been prejudiced thereby. *Spencer v. Kootenai County*, 145 Idaho 448, 180 P.3d 487 (2008).

Remand Unnecessary.

Petition for judicial review of a decision of a county board of commissioners, denying an application of medical indigency benefits on the ground that the applicant was not a resident of the county because she was an undocumented alien, was remanded to the board, because the board failed to make findings on critical factors of eligibility, including indigency and medical necessity. *Mercy Med. Ctr. v. Ada County*, 146 Idaho 226, 192 P.3d 1050 (2008).

Standard of Review.

A party appealing a county board of commissioners' decision must first show that the board erred in a manner specified in subsection (3), and then it must show that a substantial right has been prejudiced. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009); *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

When analyzing a county board of commissioners' decision, to determine if it was supported by substantial evidence pursuant to paragraph (3)(d), an appellate court will not substitute its judgment for that of the board regarding the weight of the evidence on questions of fact. The county board of commissioners' factual determinations are binding on the reviewing court, even where there is conflicting evidence, so long as the determinations are supported by substantial and competent evidence. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

The decisions of the state board of accountancy ("board") are afforded a strong presumption of validity; therefore, the court deferred to the board's application of conflict of interest rules as reasonable. *Duncan v. State*

Bd. of Accountancy, 149 Idaho 1, 232 P.3d 322 (2010).

An agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial and competent evidence in the record. *Wilkinson v. State*, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011).

Substantial Evidence.

Conditional-encroachment permit was properly granted by the Idaho Transportation Department because substantial evidence existed that the plan called for a sufficient stopping sight distance, and building the encroachment near the ditch-rider approach would generate exceptionally low volumes of traffic. *Vickers v. Lowe*, 150 Idaho 439, 247 P.3d 666 (2011).

Violation of Substantial Right.

City's interpretation of its ordinances violated a substantial right of the applicant to have its application for a private road evaluated properly under the municipal code, impeding the applicant's ability to access the property, and preventing the applicant from developing the property for admittedly permissible uses under the applicable zoning. *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 175 P.3d 776 (2007).

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners' visit to the site of the proposed subdivision was conducted in violation of Idaho's open meeting laws, § 67-2340 et seq., but appellants were not entitled to reversal of the board's decision denying their application, because appellants' substantial rights were not prejudiced as required by this section. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

When a developer purchased land to create five hundred residential units, the county board of commissioners denied its two applications for approval of the proposed development; the district court affirmed, finding that the developer's substantial rights were not violated. On review, the developer claimed that the board's denial was arbitrary or capricious, the developer's right to due process was violated, and the board's actions were barred by principles of equitable estoppel, res judicata, and claim preclusion. Because the developer did not challenge the board's finding that his substantial rights were violated under subsection (4) of this section, the supreme court did not need to review the remaining issues. *Kirk-Hughes Dev., LLC v. Kootenai County Bd. of County Comm'rs*, 149 Idaho 555, 237 P.3d 652 (2010).

Where city passed an ordinance prohibiting recreational vehicles from being located in

manufactured home parks and grandfathered in existing manufactured home parks and then denied the park owner a permit to replace an existing recreational vehicle with a new recreational vehicle in the park, the city's actions violated the park owner's due process right to continue a nonconforming use and prejudiced a substantial right of his. *Eddins v. City of Lewiston*, 150 Idaho 30, 244 P.3d 174 (2010).

Claimant failed to sufficiently allege how her substantial rights were prejudiced by the granting of a use permit, where she only briefly addressed any prejudice to a substantial right, by alleging in a conclusory manner that her property rights had been prejudiced by the grant of the permit because of "noise, commercial traffic and a disproportionately large building in the residential area." However, she did not provide any applicable authority to support the allegation that the complaints constituted prejudice to a substantial right. *Krepasky v. Nez Perce County Planning & Zoning* (In re Approval of a Conditional Use Permit #CUP-2008-3), 150 Idaho 231, 245 P.3d 983 (2010).

Board did not violate the landowner's substantial rights by substantively misapplying its ordinances in granting variances to the neighboring landowners because it was not enough that the landowner might be able to show that misapplication, where the board's decision granting the neighboring landowners' application for a variance did not prejudice the landowner's substantial rights. *Hawkins v. Bonneville County Bd. of Comm'rs*, 151 Idaho 228, 254 P.3d 1224 (2011).

Allowing neighboring landowners to construct new homes by granting their applications for variances did not change the number of structures on the land, and to demolish unattended houses and replace them with new homes built to modern safety codes would reduce the chance of fire that could spread to the complaining landowner's property. Granting the variances did not prejudice

a substantial right. *Hawkins v. Bonneville County Bd. of Comm'rs*, 151 Idaho 228, 254 P.3d 1224 (2011).

Plain text of § 41-1042 permits a bail bond company to contemporaneously write a bail bond and contract with a client to indemnify the company for the cost of apprehending a defendant who jumps bail. *Idaho Admin. Code R. 18.01.04.016.02*, which forbids such contracts, contravenes the statute and prejudices the company's substantial right to contract freely, contrary to this section. *Two Jinn, Inc. v. Idaho Dep't of Ins.*, — Idaho —, 293 P.3d 150 (2013).

Cited in: *Haw v. State Bd. of Med.*, 143 Idaho 51, 137 P.3d 438 (2006); *Lane Ranch P'ship v. City of Sun Valley*, 144 Idaho 584, 166 P.3d 374 (2007); *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007); *Archer v. Dep't of Transp.* (In re Archer), 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008); *Bennett v. State*, 147 Idaho 141, 206 P.3d 505 (Ct. App. 2009); *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009); *Wheeler v. Idaho Transp. Dep't*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *Gardiner v. Boundary County Bd. of Comm'rs*, 148 Idaho 764, 229 P.3d 369 (2010); *St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs*, 149 Idaho 584, 237 P.3d 1210 (2010); *McDaniel v. State* (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); *Burton v. State*, 149 Idaho 746, 240 P.3d 933 (Ct. App. 2010); *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011); *Bell v. Idaho Transp. Dep't* (In re Bell), 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011); *Maclay v. Idaho Real Estate Comm'n.*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012); *Elias-Cruz v. Idaho DOT*, 153 Idaho 200, 280 P.3d 703 (2012); *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

CHAPTER 53

PERSONNEL SYSTEM

SECTION.

67-5302. Definitions.

67-5303. Application to state employees.

67-5309. Rules of the division of human resources and the personnel commission.

67-5328. Hours of work and overtime.

67-5333. Sick leave.

67-5333A. Sick leave transferred — Community colleges — State employment.

SECTION.

67-5333B. Sick leave transferred — Former employees of Sella College of applied technology at Boise State University — State employment.

67-5334. Vacation time.

67-5342A. Severance pay — Purchase of membership service prohibited.

67-5302. Definitions. — As used in this chapter, and other applicable sections of the Idaho Code, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context. Such terms and their definitions are:

(1) “Administrative employee” means any person, nonclassified or classified appointed to a position which meets the criteria set forth in the federal fair labor standards act, 29 U.S.C. section 201, et seq. Final designation of a classified position as “administrative” within this definition shall be made by the administrator of the division of human resources. Exceptions to this designation which do not violate the federal fair labor standards act, 29 U.S.C. section 201, et seq., may be made by the administrator.

(2) “Administrator” means the administrator of the division of human resources in the governor’s office.

(3) “Appointing authority” means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to make appointments to or employ personnel in any department.

(4) “Class” means a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience or skill, and other characteristics, that the same title, the same tests of fitness and the same schedule of compensation may be applied to each position in the group.

(5) “Classified officer or employee” means any person appointed to or holding a position in any department of the state of Idaho which position is subject to the provisions of the merit examination, selection, retention, promotion and dismissal requirements of chapter 53, title 67, Idaho Code.

(6) “Commission” means the Idaho personnel commission.

(7) “Compensatory time” means approved time off from duty provided in compensation for overtime hours worked.

(8) “Computer worker” means any person, nonclassified or classified, appointed to a position which meets the criteria set forth in the federal fair labor standards act, 29 U.S.C. section 201, et seq. Final designation of a classified position as “computer worker” within this definition shall be made by the administrator of the division of human resources. Exceptions to this designation which do not violate the federal fair labor standards act, 29 U.S.C. section 201, et seq., may be made by the administrator.

(9) “Department” means any department, agency, institution or office of the state of Idaho.

(10) “Disabled veteran” is as defined in section 65-502, Idaho Code.

(11) “Eligible” means a person who has been determined to be qualified for a classified position and whose name has been placed on the register of eligibles.

(12) “Executive employee” means any person, nonclassified or classified, appointed to a position equivalent to a bureau chief or above as provided in section 67-2402, Idaho Code, or any employee meeting the following criteria:

- (a) An individual whose primary duty is management of a department, division or bureau; and
- (b) Who customarily and regularly directs the work of at least two (2) or more other employees therein; and

(c) Who has the authority to hire and fire, or to recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by rule.

(f) Final designation of a classified position as "executive" in this definition shall be made by the administrator. Exceptions to this designation which do not violate the federal fair labor standards act, 29 U.S.C. section 201, et seq., may be made by the administrator.

(13) "Exempt employee" means any employee, classified or nonclassified, who is determined to be an executive, professional or administrative employee as defined herein, or who qualifies for any other exemption from cash compensation for overtime under applicable federal law. Final designation of a classified position as exempt shall be made by the administrator.

(14) "Full-time employee" means any employee working a forty (40) hour work week.

(15) "Holiday" means the following:

January 1 (New Year's Day);

Third Monday in January (Martin Luther King, Jr.—Idaho Human Rights Day);

Third Monday in February (Washington's Birthday);

Last Monday in May (Memorial Day);

July 4 (Independence Day);

First Monday in September (Labor Day);

Second Monday in October (Columbus Day);

November 11 (Veterans Day);

Fourth Thursday in November (Thanksgiving);

December 25 (Christmas).

In addition, the term "holiday" shall mean any day so designated by the President of the United States or the governor of this state for a public fast, thanksgiving or holiday.

In the event that a holiday occurs on a Saturday, the preceding Friday shall be a holiday, and if the holiday falls on a Sunday, the following Monday shall be a holiday.

A holiday is a day of exemption from work granted to nonexecutive employees during which said employees shall be compensated as if they actually worked. Employees classified as executive exempt are entitled to ten (10) paid holidays per year. If such an employee works on one (1) of the official holidays listed in this subsection, then such employee may take an alternative day off but shall not receive additional compensation.

(16) "Hours worked" means those hours actually spent in the performance of the employee's job on any day including holidays, and shall not include vacation or sick leave or other approved leave of absence.

(17) "Nonclassified employee" means any person appointed to or holding a position in any department of the state of Idaho, which position is exempted from the provisions of chapter 53, title 67, Idaho Code, as provided for in section 67-5303, Idaho Code.

(18) "Normal work week" means any forty (40) hours worked during a particular one hundred sixty-eight (168) hour period as previously established by the employee's appointing authority.

(19) "Open competitive examination" means an examination which may be taken by qualified applicants to compete on an equal basis for listing on the register of eligibles.

(20) "Overtime work" means time worked on holidays and time worked in excess of forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, except that in the case of those employees engaged in law enforcement, correctional and fire protection activities characterized by irregular shift work schedules, time worked in excess of one hundred sixty (160) hours in a period of twenty-eight (28) consecutive days shall constitute overtime work within the meaning of this chapter. Such employees may also be paid overtime for specific hours worked in addition to their normal schedules upon emergency declaration by the governor or with the approval of the appointing authority and the board of examiners.

(21) "Participating department" means any department of the state of Idaho which employs persons in classified positions subject to the merit examination, selection, retention, promotion and dismissal requirements of this chapter.

(22) "Part-time employee" means any employee whose usually scheduled work is less than forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, and who shall not be entitled to sick leave accruals provided in section 67-5333, Idaho Code, vacation leave provided in section 67-5334, Idaho Code, nor holiday pay as defined in subsection (15) of this section, unless contributions are being made to the public employee retirement system in accordance with chapter 13, title 59, Idaho Code, and rules promulgated by the public employee retirement system board.

(23) "Personnel system" means the procedure for administering employees in accordance with this chapter.

(24) "Political office" means a public office for which partisan politics is a basis for nomination, election or appointment.

(25) "Political organization" means a party which sponsors candidates for election to political office.

(26) "Position" means a group of duties and responsibilities legally assigned or delegated by one (1) or more appointing authorities and requiring the employment of one (1) person.

(27) "Professional employee" means any person, nonclassified or classified, appointed to a position which meets the criteria set forth in the federal fair labor standards act, 29 U.S.C. section 201, et seq. Final designation of a classified position as "professional" within this definition shall be made by the administrator. Exceptions to this designation which do not violate the federal fair labor standards act, 29 U.S.C. section 201, et seq., may be made by the administrator.

(28) "Provisional appointment" means appointment to a classified position pending the establishment of a register for such position and employment shall not be continued in this status longer than thirty (30) days after establishment of a register.

(29) “Qualifying examination” means an examination or evaluation given to a selected person to determine eligibility for reclassification or appointment to a position in a classification.

(30) “Register” means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established by the administrator.

(31) “Seasonal appointment” means an appointment to a position which is permanent in nature, but which has intermittent work periods throughout the year.

(32) “Service rating” means a recorded evaluation of work performance and promotional potential of an employee by his supervisor.

(33) “Temporary appointment” means appointment to a position which is not permanent in nature, and in which employment will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period. No person holding a temporary appointment may work in excess of one thousand three hundred eighty-five (1,385) hours during a twelve (12) month period of time for any one (1) department, except upon petition by the appointing authority of the department of lands that demonstrates good cause, the administrator of the division of human resources may extend the one thousand three hundred eighty-five (1,385) hour limit for employees of the department who are required to perform fire suppression activities.

(34) “Vacation leave” means a period of exemption from work granted to employees during which time said employees shall be compensated. The term shall not include compensatory time for overtime work.

(35) “Veteran” is as defined in section 65-502, Idaho Code.

History.

1965, ch. 289, § 2, p. 746; am. 1975, ch. 164, § 1, p. 434; am. 1977, ch. 307, § 3, p. 856; am. 1979, ch. 197, § 1, p. 568; am. 1981, ch. 133, § 1, p. 221; am. 1986, ch. 133, § 1, p. 341; am. 1990, ch. 371, § 1, p. 1019; am. 1993, ch. 75, § 1, p. 198; am. 1993, ch. 233, § 1, p. 811; am.

1999, ch. 243, § 1, p. 616; am. 1999, ch. 370, § 2, p. 976; am. 2000, ch. 121, § 1, p. 262; am. 2002, ch. 146, § 2, p. 419; am. 2006, ch. 51, § 16, p. 145; am. 2006, ch. 380, § 7, p. 1175; am. 2008, ch. 138, § 1, p. 396; am. 2008, ch. 196, § 2, p. 619.

STATUTORY NOTES

Amendments.

The section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 138, added the last sentence in subsection (20).

The 2008 amendment, by ch. 196, rewrote subsections (1) and (27) to the extent that a detailed comparison is impracticable; added present subsection (8) and redesignated former subsections (8) and (9) as present subsections (9) and (10); deleted former subsection (10), which was the definition for “Earned administrative leave”; added the last sentence in paragraph (12)(f); and in subsection (22), added the language beginning “and who shall not be entitled to sick leave accruals provided in section 67-5333, Idaho Code.”

tions (9) and (10); deleted former subsection (10), which was the definition for “Earned administrative leave”; added the last sentence in paragraph (12)(f); and in subsection (22), added the language beginning “and who shall not be entitled to sick leave accruals provided in section 67-5333, Idaho Code.”

Effective Dates.

Section 2 of S.L. 2008, ch. 138 declared an emergency. Approved March 17, 2008.

67-5303. Application to state employees. — All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified employees, who

are subject to this chapter and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, deputy directors appointed by the director and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the lieutenant governor, secretary of state, attorney general, state treasurer, state controller, and state superintendent of public instruction who are appointed on and after the effective date of this chapter.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department in addition to those declared to be nonclassified by other provisions of law.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho supreme court, Idaho court of appeals and district courts.

(h) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho division of professional-technical education and vocational rehabilitation administered by the state board for professional-technical education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in academic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrevocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division.

(l) Patients, inmates or students employed in a state institution.

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific individuals or

groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey advertising commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint grower's commission, as provided in chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as provided in chapter 1, title 25, Idaho Code; the state brand inspector, and all district supervisors, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of correctional industries within the department of correction.

(r) All deputy administrators and wardens employed by the department of correction. Deputy administrators are defined as only the deputy administrators working directly for the nonclassified division administrators under the director of the department of correction.

(s) All public information positions with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or division administrator in the department of environmental quality.

(v) All employees of the division of financial management.

(w) All employees of the Idaho food quality assurance institute.

(x) The state appellate public defender, deputy state appellate public defenders and all other employees of the office of the state appellate public defender.

(y) All quality assurance specialists or medical investigators of the Idaho board of medicine.

(z) All pest survey and detection employees and their supervisors hired specifically to carry out activities under the Idaho plant pest act, chapter 20,

title 22, Idaho Code, including but not limited to pest survey, detection and eradication, except those positions involved in the management of the program.

History.

1965, ch. 289, § 3, p. 746; am. 1969, ch. 171, § 1, p. 510; am. 1971, ch. 121, § 1, p. 405; am. 1972, ch. 389, § 1, p. 1121; am. 1973, ch. 175, § 1, p. 385; am. 1973, ch. 307, § 1, p. 667; am. 1975, ch. 164, § 2, p. 434; am. 1976, ch. 367, § 1, p. 1205; am. 1979, ch. 198, § 1, p. 573; am. 1981, ch. 133, § 2, p. 221; am. 1981, ch. 156, § 1, p. 267; am. 1983, ch. 5, § 1, p. 19; am. 1986, ch. 133, § 2, p. 341; am. 1986, ch. 204, § 1, p. 509; am. 1991, ch. 66, § 1, p. 180;

am. 1991, ch. 216, § 1, p. 519; am. 1993, ch. 77, § 1, p. 204; am. 1994, ch. 180, § 219, p. 420; am. 1995, ch. 365, § 4, p. 1276; am. 1997, ch. 302, § 2, p. 894; am. 1998, ch. 221, § 1, p. 761; am. 1998, ch. 389, § 8, p. 1190; am. 1999, ch. 17, § 1, p. 24; am. 1999, ch. 329, § 27, p. 852; am. 2001, ch. 38, § 1, p. 71; am. 2001, ch. 103, § 101, p. 253; am. 2002, ch. 188, § 1, p. 541; am. 2002, ch. 192, § 1, p. 553; am. 2008, ch. 89, § 1, p. 247; am. 2011, ch. 30, § 1, p. 72; am. 2012, ch. 117, § 26, p. 321.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 89, deleted “the Idaho prune commission, as provided in chapter 30, title 22, Idaho Code” preceding “the Idaho hop grower’s commission” in subsection (o) and added subsection (2).

The 2011 amendment, by ch. 30, in the second sentence of subsection (r), deleted “six

(6)” preceding “deputy administrators” and “two (2)” preceding “nonclassified division administrators.”

The 2012 amendment, by ch. 117, substituted “Idaho sheep and goat health board” for “state board of sheep commissioners” in subsection (o).

67-5309. Rules of the division of human resources and the personnel commission. — The administrator of the division of human resources shall have the power and authority to adopt, amend, or rescind such rules as may be necessary for proper administration of this chapter. Such rules shall include:

(a) A rule requiring the administrator, after consulting with each department to develop, adopt, and make effective, a job classification system for positions covered by this chapter, based upon an analysis of the duties and responsibilities of the positions. The job classification shall include an appropriate title for each class, and a description of duties and responsibilities of positions in the classes and the requirements of minimum training, experience and other qualifications, suitable for the performance of duties of the position.

(b) A rule describing the relevant labor markets and benchmark job classifications used in the administrator’s salary surveys.

(c) A rule requiring that all classes of positions which are common to the departments concerned shall have the same titles, minimum requirements and compensation ranges.

(d) A rule providing for review by the administrator of the personnel system including classifications and compensation policies and procedures.

(e) A rule that, notwithstanding the procedure for examination and ranking of eligibles on a register provided in subsection (f) of this section, an agency may appoint an individual directly into an entrance or promotional probation if the division of vocational rehabilitation, Idaho commission for the blind and visually impaired or the industrial commission certifies, with the concurrence of division of human resources staff, that the individual (1)

has a disability or handicap as defined under state or federal law; (2) is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3) lacks competitiveness in the examination process due to the disability or handicap. The probationary period as provided in subsection (j) of this section shall be the sole examination for such individuals.

(f) A rule requiring fair and impartial selection of appointees to all positions other than those defined as nonclassified in this chapter, on the basis of open competitive merit examinations or evaluations. An application for an examination will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of the examination. A disabled veteran may file an application at any time up until a selection has been made for any position for which the division maintains a register as a source for future job openings or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. Examinations may be assembled or unassembled and may include various examining techniques such as rating of training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measure of ability to perform the duties of the position. Examinations shall be scored objectively. Five (5) percentage points shall be added to the earned rating of any veteran as defined in section 65-502, Idaho Code, and the widow or widower of any veteran as defined in section 65-502, Idaho Code, as long as he or she remains unmarried. Pursuant to section 65-504, Idaho Code, ten (10) percentage points shall be added to the earned rating of any disabled veteran as defined in section 65-502, Idaho Code, the widow or widower of any disabled veteran as long as he or she remains unmarried or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers shall be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the twenty-five (25) top ranking available eligibles plus the names of all individuals with scores identical to the twenty-fifth ranking eligible on the register. A register with at least five (5) eligibles shall be adequate. Selective certification shall be permitted when justified by the hiring department, under rules to be made by the division defining adequate justification based on the duties and requirements of the positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan

established, but shall be held not later than one (1) year after departments commence participation in the personnel system.

(g) A rule that, whenever practicable, a vacancy in a classified position shall be filled by the promotion of a qualified employee of the agency in which the vacancy occurs. An interagency promotion shall be made through competitive examination and all qualified state employees shall have the opportunity to compete for such promotions. If an employee's name appears within certifiable range on a current register for a higher class of position, he shall be eligible for a transfer and promotion.

(h) A rule for development and maintenance of a system of service ratings and the use of such ratings by all departments in connection with promotions, demotions, retentions, separations and reassignments. The rule shall require that an evaluation of each classified employee shall be made after each two thousand eighty (2,080) hour period of credited state service, and that a copy of the evaluation shall be filed with the division.

(i) A rule prohibiting disqualification of any person from taking an examination, from appointment to a position, from promotion, or from holding a position because of race or national origin, color, sex, age, political or religious opinions or affiliations, and providing for right of appeal.

(j) A rule establishing a probation period not to exceed one thousand forty (1,040) hours of credited state service for all appointments and promotions, except that peace officers as defined in section 19-5101, Idaho Code, shall be subject to a probation period of two thousand eighty (2,080) hours of credited state service, and for the appointing authority to provide the employee and the administrator a performance evaluation indicating satisfactory or unsatisfactory performance not later than thirty (30) days after the expiration of the probationary period. The rule shall provide that if the appointing authority fails to provide a performance evaluation within thirty (30) days after the expiration of the probationary period, the employee shall be deemed to have satisfactorily completed the probation unless the appointing authority receives approval from the administrator to extend the probationary period for good cause for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. If an employee is performing in an unsatisfactory manner during the entrance probationary period, the appointing authority shall ask the employee to resign, and if no resignation is submitted, shall terminate the employment of such employee without the right of grievance or appeal.

(k) A rule concerning provisional appointments.

(l) A rule concerning temporary appointments.

(m) A rule governing the employment of consultants and persons retained under independent contract.

(n) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:

1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes and rules of the employee's department, or rules of the administrator or the division.

2. Inefficiency, incompetency, or negligence in the performance of duties, or job performance that fails to meet established performance standards.
3. Physical or mental incapability for performing assigned duties.
4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.
5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.
6. Intoxication on duty.
7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.
8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.
9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.
10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.
11. Habitual pattern of failure to report for duty at the assigned place and time.
12. Habitual improper use of sick leave privileges.
13. Unauthorized disclosure of confidential information from official records.
14. Absence without leave.
15. Misstatement or deception in the application for the position.
16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.
17. Prohibited participation in political activities.

(o) A rule to establish procedures for maintenance of a record of the employment history and appropriate information relating to performance of all employees under the personnel system. For the purposes of this rule, the state shall be considered one (1) employer.

(p) Rules to provide for recruitment programs in cooperation with department heads and the employment security agency in keeping with current employment conditions and labor market trends.

(q) Rules to establish procedures for examinations as necessary for the purpose of maintaining current registers from which to fill employment vacancies.

(r) Other rules not inconsistent with the foregoing provisions of this section as may be necessary and proper for the administration and enforcement of this chapter.

(s) A rule concerning "project exempt" appointments.

(t) Rules relating to leave for state employees from official duties including, but not limited to, sick leave, military leave, jury duty, leaves of absence without compensation and such other forms of absence from performance of duties in the course of state employment as may be necessary.

(u) A rule providing up to twenty-five percent (25%) shift differential pay based on local market practices.

(v) A rule to establish guidelines for awarding employee suggestion awards set forth in sections 59-1603 and 67-5309D, Idaho Code.

(w) A rule to establish the reimbursement of moving expenses for a current or newly-hired state employee.

(x) A rule to allow, at the request of the hiring agency, temporary service time to count toward fulfilling entrance probationary requirements as established in subsection (j) of this section.

(y) A rule to allow, at the request of the hiring agency, acting appointment service time to count toward fulfilling promotional probationary requirements as established in subsection (j) of this section.

History.

1965, ch. 289, § 9, p. 746; am. 1969, ch. 171, § 2, p. 510; am. 1972, ch. 52, § 1, p. 93; am. 1973, ch. 58, § 1, p. 93; am. 1975, ch. 164, § 4, p. 434; am. 1976, ch. 367, § 2, p. 1205; am. 1979, ch. 36, § 1, p. 53; am. 1981, ch. 133, § 3, p. 221; am. 1986, ch. 127, § 1, p. 327; am. 1986, ch. 133, § 4, p. 341; am. 1987, ch. 99, § 1, p. 194; am. 1989, ch. 85, § 1, p. 146; am. 1990, ch. 161, § 1, p. 350; am. 1993, ch. 67,

§ 1, p. 177; am. 1993, ch. 104, § 1, p. 262; am. 1994, ch. 159, § 4, p. 359; am. 1994, ch. 272, § 2, p. 836; am. 1994, ch. 294, § 1, p. 928; am. 1997, ch. 163, § 1, p. 469; am. 1999, ch. 370, § 8, p. 976; am. 2001, ch. 214, § 3, p. 844; am. 2002, ch. 134, § 2, p. 365; am. 2006, ch. 51, § 17, p. 145; am. 2006, ch. 380, § 8, p. 1175; am. 2010, ch. 80, § 1, p. 157; am. 2011, ch. 98, § 1, p. 235.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 80, in the tenth sentence in subsection (f), substituted “twenty-five (25)” and “twenty-fifth” for “ten (10)” and “tenth” respectively.

The 2011 amendment by ch. 98, in subsec-

tion (x), deleted “and acting appointment” following “hiring agency, temporary” and substituted “subsection (j) of this section” for “section 67-5309(j), Idaho Code”; and added subsection (y).

67-5315. Establishment and adoption of employee problem solving and due process procedures.

JUDICIAL DECISIONS

Exhaustion of Administrative Remedies.

Where forms containing corrections officers’ personal information were disclosed to an inmate during criminal proceeding discovery, officers’ retaliation claims were properly dismissed because they failed to exhaust their

administrative remedies since they did not pursue any grievance procedure; the officers sought damages for allegedly tortious conduct and this conduct was closely tied to the adverse employment action. *Nation v. State*, 144 Idaho 177, 158 P.3d 953 (2007).

67-5316. Appeal procedure.

JUDICIAL DECISIONS

ANALYSIS

Attorney’s fees.
Prejudgment interest.

Attorney’s Fees.

Subsection (4) specifically mentioned reinstatement, with or without loss of pay; nothing would lead to the conclusion that legislature also intended to include an award of attorney fees as a possible other remedy; a fair reading of the statute led to the conclusion that the employee was not entitled to an

award of attorney fees. *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

Prejudgment Interest.

Section 28-22-104 did not overcome the presumption of the state’s sovereign immunity, and subsection (4) of this section spoke only of “pay” and made no mention of interest;

this language did not qualify as a clear waiver of sovereign immunity; therefore, there was no basis for an award of prejudgment interest

to the employee against the Idaho department of correction. *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

67-5318. Appeal to district court.

JUDICIAL DECISIONS

Cited in: *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

67-5328. Hours of work and overtime. — (1) It is hereby declared to be the policy of the legislature of the state of Idaho that all classified employees shall be treated substantially similar with reference to hours of employment. The policy of this state as declared in this act shall not restrict the extension of regular work hour schedules on an overtime basis in those activities and duties where such extension is necessary and authorized, provided that overtime work performed under such extension is compensated for as hereinafter provided.

(2) The appointing authority of any department shall determine the necessity for overtime work and shall provide for cash compensation or compensatory time off for such overtime work for eligible classified officers and employees, subject to the restrictions of applicable federal law.

(3) Cash for overtime and compensatory time shall be paid based on the following criteria:

(a) Classified and nonclassified officers and employees who fall within one (1) or more of the following categories are ineligible for cash compensation or compensatory time for overtime work:

(i) Elected officials; or

(ii) Those included in the definition of section 67-5303(j), Idaho Code.

(b) Classified and nonclassified employees who are designated as executive, as provided in section 67-5302, Idaho Code, and who are not included in the definition of subsection (3)(a) of this section, shall be ineligible for compensatory time or cash compensation for overtime work. Such salaried employees shall report absences in excess of one-half (1/2) day. Unused compensatory time balances in excess of two hundred forty (240) hours as of the date of enactment of this act shall be forfeited on December 31, 2008. Unused compensatory time balances of two hundred forty (240) hours or less shall be forfeited on December 31, 2006. Employees who become executives within their current agency as set forth in section 67-5302(12), Idaho Code, shall have twelve (12) months from the date of this act or of appointment, whichever is later, to use any compensatory time balance. After twelve (12) months, any remaining compensatory time will be forfeited. Compensatory time is not transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service.

(c) Classified and nonclassified employees who are designated as administrative or professional, as provided in the federal fair labor standards act, 29 U.S.C. section 201, et seq., or who are designated as exempt under any other complete exemption in federal law, and who are not included in

the definition of either subsection (3)(a) or (3)(b) of this section, shall be ineligible for cash compensation for overtime work unless cash payment is authorized by the state board of examiners for overtime accumulated during unusual or emergency situations, but such classified and nonclassified employees shall be allowed compensatory time off from duty for overtime work. Such compensatory time shall be earned and allowed on a one (1) hour for one (1) hour basis, shall not be transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service. Compensatory time may be accrued and accumulated up to a maximum of two hundred forty (240) hours. Effective with the first pay period in July, 2008 (beginning date June 15, 2008), compensatory time balances in excess of two hundred forty (240) hours will not continue to accrue until the balance is below the maximum. After the last pay period in June, 2009 (ending date June 13, 2009), balances in excess of two hundred forty (240) hours shall be forfeited.

(d) Classified employees who are not designated as executive, administrative or professional as provided in this section, and who are not included in the definition of subsection (3)(a) of this section or who are not designated as exempt under any other complete exemption in federal law, shall be eligible for cash compensation or compensatory time off from duty for overtime work, subject to the restrictions of applicable federal law. Compensatory time off may be provided in lieu of cash compensation at the discretion of the appointing authority after consultation, in advance, with the employee. Compensatory time off shall be paid at the rate of one and one-half (1 1/2) hours for each overtime hour worked. Compensatory time off which has been earned during any one-half (1/2) fiscal year but not taken by the end of the succeeding one-half (1/2) fiscal year, shall be paid in cash on the first payroll following the close of such succeeding one-half (1/2) fiscal year. Compensatory time not taken at the time of transfer to another appointing authority or upon separation from state service shall be liquidated at the time of such transfer or separation by payment in cash.

(e) Notwithstanding the provisions of this section, employees may be paid for overtime work during a disaster or emergency with the approval of the board of examiners.

(4) Cash compensation for overtime, when paid, shall be at one and one-half (1 1/2) times the hourly rate of that officer's or employee's salary or wage, except for those employees whose positions fall within the definitions of executive, administrative or professional as stated in section 67-5302, Idaho Code, who will be paid at their regular hourly rate of pay as provided for in subsection (3) of this section.

(5) Except as provided for in subsection (3) of this section, compensation for authorized overtime work shall be made at the completion of the pay period next following the pay period in which the overtime work occurred and shall be added to the regular salary payment.

History.

1971, ch. 327, § 3, p. 1289; am. 1977, ch. 307, § 7, p. 856; am. 1986, ch. 133, § 6, p.

341; am. 2006, ch. 380, § 17, p. 1175; am. 2008, ch. 196, § 3, p. 623.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 196, added the last two sentences in paragraph (3)(b); in paragraph (3)(c), inserted "29 U.S.C. section 201, et seq., or who are designated as exempt under any other complete exemption in fed-

eral law" in the first sentence and added the last three sentences; in paragraph (3)(d), inserted "or who are not designated as exempt under any other complete examination in federal law" in the first sentence; and added paragraph (3)(e).

67-5333. Sick leave. — (1) Sick leave shall be computed as follows:

(a) The rate per hour at which sick leave shall accrue to classified officers and employees earning credited state service shall be at the rate represented by the proportion $\frac{96}{2080}$. Sick leave shall accrue without limit, and shall be transferable from department to department.

(b) Sick leave shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Sick leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time is taken.

(c) All accrued sick leave shall be forfeited at the time of separation from state service and no officer or employee shall be reimbursed for accrued sick leave at the time of separation, except as provided in subsection (2) of this section. If such officer or employee returns to credited state service within three (3) years of such separation, all sick leave credits accrued at the time of separation shall be reinstated, except to the extent that unused sick leave was utilized for the purposes specified in subsection (2) of this section.

(d) Sick leave shall be taken on a workday basis. Regularly scheduled days off and officially designated holidays falling within a period of sick leave shall not be counted against sick leave. Sick leave shall not be taken in advance of being earned and shall only be taken in pay periods subsequent to being earned.

(e) In cases where absences for sick leave exceed three (3) consecutive working days, the appointing authority may require verification by a physician or other authorized practitioner.

(f) If an absence for illness or injury extends beyond the sick leave accrued to the credit of the officer or employee, the officer or employee may be granted leave without pay.

(g) The administrator shall prescribe additional requirements for sick leave for classified officers and employees on a part-time or irregular schedule, for maintaining sick leave records, for funeral leave, and such other applicable purposes as necessary.

(2) Unused sick leave may be used as follows:

(a) Upon separation from state employment by retirement in accordance with chapter 13, title 59 or chapter 1, title 33, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, and shall be reported by the employer

to the public employee retirement system. Upon separation from state employment by retirement in accordance with chapter 20, title 1, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 2000, and shall be reported by the employer to the public employee retirement system. A sum equal to one-half (1/2), or the maximum amount allowed by paragraph (b) of this subsection (2), whichever is the lesser, of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by paragraph (c) of this subsection (2) and shall be credited to such employee's retirement account. Such sums shall be used by the Idaho public employee retirement board to pay premiums, as permitted by and subject to applicable federal tax laws and limits, for such health, dental, vision, long-term care, prescription drug and life insurance programs as may be maintained by the state, to the extent of the funds credited to the employee's account pursuant to this section. Upon an employee's death, any unexpended sums remaining in the account shall revert to the sick leave account.

(b) For the purposes of determining the monetary value of unused sick leave, the maximum unused sick leave which may be considered, shall be:

- (i) During the first ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be four hundred twenty (420) hours;
- (ii) During the second ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be four hundred eighty (480) hours;
- (iii) During the third ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be five hundred forty (540) hours; and
- (iv) Thereafter, the maximum unused sick leave which may be considered shall be six hundred (600) hours.

(c) Each employer in state government shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in section 59-1305, Idaho Code. Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget. The state insurance fund and public health districts shall

be considered employers in state government for purposes of participation under this section.

History.

I.C., § 67-5333, as added by 1977, ch. 307, § 11, p. 856; am. 1981, ch. 133, § 7, p. 221; am. 1999, ch. 243, § 4, p. 616; am. 1999, ch. 370, § 16, p. 976; am. 2000, ch. 121, § 3, p.

262; am. 2006, ch. 150, § 2, p. 463; 2006, ch. 380, § 18, p. 1175; am. 2007, ch. 78, § 2, p. 205; am. 2008, ch. 196, § 4, p. 625; am. 2009, ch. 164, § 1, p. 492.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 78, in subsection (2)(c), inserted “in trust” in the first sentence, and added the second, third, and sixth sentences.

The 2008 amendment, by ch. 196, in the last sentence in paragraph (1)(b), deleted “or earned administrative leave” following “compensatory time”; and at the end of paragraph (1)(d), added “and shall only be taken in pay periods subsequent to being earned.”

The 2009 amendment, by ch. 164, in the next-to-last sentence in subsection (2)(a), inserted “as permitted by and” and “laws and” and deleted “group” preceding “health.”

Effective Dates.

Section 3 of S.L. 2009, ch. 164 declared an emergency. Approved April 14, 2009.

67-5333A. Sick leave transferred — Community colleges — State employment. — Notwithstanding any other provision of law to the contrary, any employee who has accrued sick leave while in the employment of one (1) of Idaho’s community colleges and who, on or after January 1, 2012, is transferred to or otherwise becomes an eligible employee of a state of Idaho educational agency immediately following termination of employment with a community college shall be credited by the state of Idaho with the amount of sick leave accrued and unused, up to a maximum of ninety (90) days, upon commencement of state employment. After such transfer, the use of sick leave shall be governed by the laws and rules applicable to state employees and any applicable policies of the state agency or entity thereafter employing such employee.

History.

I.C., § 67-5333A, as added by 2012, ch. 138, § 1, p. 365.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2012, ch. 138 declared an emergency. Approved March 27, 2012.

67-5333B. Sick leave transferred — Former employees of Seland college of applied technology at Boise state university — State employment. — Notwithstanding any other provision of law to the contrary, any former employee of Seland college of applied technology at Boise state university (BSU) whose sick leave accumulated at BSU and was transferred to the college of western Idaho (CWI) pursuant to section 33-2109B, Idaho Code, and who, on or before September 1, 2012, was transferred to or otherwise became an eligible employee of the state of Idaho

immediately following termination of employment with CWI shall be credited by the state of Idaho with the amount of sick leave transferred to CWI from BSU that remains unused, upon commencement of state employment. After such transfer, the use of sick leave shall be governed by the laws and rules applicable to state employees and by any applicable policies of the state agency or entity thereafter employing such employee.

History.

I.C., § 67-5333B, as added by 2012, ch. 138,
§ 2, p. 365.

STATUTORY NOTES**Compiler's Notes.**

Section 33-2109B, referred to in this section, was enacted by S.L. 2000, ch. 22, § 1 and became null and void on September 2, 2009, pursuant to S.L. 2009, ch. 22, § 3.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2012, ch. 138 declared an emergency. Approved March 27, 2012.

67-5334. Vacation time. — (1) Vacation time shall be computed as follows:

(a) Vacation time shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Vacation leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time is taken.

(b) The rate per hour at which vacation leave shall accrue to eligible classified officers and employees earning credited state service who are covered and nonexempt under the federal fair labor standards act, 29 U.S.C. section 201, et seq., shall be at the rate represented by the proportion 96/2080 during the first ten thousand four hundred (10,400) hours of credited state service; at the rate represented by the proportion 120/2080 during the second ten thousand four hundred (10,400) hours of credited state service; at the rate represented by the proportion 144/2080 during the third ten thousand four hundred (10,400) hours of credited state service; and at the rate represented by the proportion 168/2080 thereafter.

(c) Classified officers and employees earning credited state service and defined as an exempt "professional," "administrative," "computer worker" under the federal fair labor standards act, 29 U.S.C. section 201, et seq., or who are designated as exempt under any other complete exemption in federal law shall be at the rate represented by the proportion 120/2080 during the first ten thousand four hundred (10,400) hours of credited state service; at the rate represented by the proportion 144/2080 during the second ten thousand four hundred (10,400) hours of credited state service; and at the rate represented by the proportion 168/2080 thereafter.

(d) Classified officers and employees earning credited state service and defined as an exempt "executive" under section 67-5302, Idaho Code, shall be at the rate represented by the proportion 200/2080.

- (2) Eligibility and use of vacation time shall be determined as follows:
- (a) An appointing authority shall permit each officer or employee to take vacation leave to the extent such leave has accrued.
 - (b) Vacation leave may be accrued and accumulated only as follows, unless amounts in excess of the permitted accumulations have been expressly authorized in writing by the board of examiners during unusual or emergency situations:

During the first ten thousand four hundred (10,400) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of one hundred ninety-two (192) hours; employees classified as "executive" under section 67-5302, Idaho Code, may accrue and accumulate vacation leave to a maximum of two hundred (200) hours during this period;

During the second ten thousand four hundred (10,400) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of two hundred forty (240) hours;

During the third ten thousand four hundred (10,400) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of two hundred eighty-eight (288) hours;

After thirty-one thousand two hundred (31,200) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of three hundred thirty-six (336) hours.

- (c) Vacation leave shall be transferable from department to department only to the extent that it is accrued and accumulated.
- (d) Vacation leave shall not be earned, accrued or accumulated during any pay period in which the maximum accruals and accumulations provided by this section have been met.
- (e) Vacation leave not taken shall be compensated for at the time of separation only to the maximum accruals and accumulations allowed by this section.
- (f) Vacation leave shall be taken on a workday basis. Regularly scheduled days off and officially designated holidays falling within a period of vacation leave shall not be counted against vacation leave. Vacation leave shall not be taken in advance of being earned and shall only be taken in pay periods subsequent to being earned.
- (g) With the approval of the appointing authority for both the transferring and receiving officer or employee, an officer or employee may transfer accrued vacation leave, up to a maximum of eighty (80) hours per fiscal year, to another officer or employee for purposes of sick leave in the event the receiving officer or employee or a family member suffers from a serious illness or injury. The amount transferred shall be converted to sick leave. An officer or employee shall not be allowed to receive more than one hundred sixty (160) hours of transferred leave per fiscal year, and a transfer shall not occur until the receiving employee has exhausted all of his or her accrued sick and vacation leave. An officer or employee shall not be eligible to transfer vacation leave unless his or her balance exceeds eighty (80) hours, and in no event may an officer or employee transfer an amount of accrued leave which would result in an accrued balance of less than eighty (80) hours.

(3) Upon separation from state employment and to the limits allowed by subsection (2) of this section, all classified officers and employees shall receive a lump sum payment for accrued but unused vacation leave at the hourly rate of pay of that officer or employee.

History.

1971, ch. 327, § 9, p. 1289; am. 1972, ch. 326, § 5, p. 806; am. 1977, ch. 307, § 12, p. 856; am. 1999, ch. 243, § 5, p. 616; am. 2000,

ch. 121, § 4, p. 262; am. 2006, ch. 380, § 19, p. 1175; am. 2008, ch. 196, § 5, p. 627; am. 2010, ch. 72, § 1, p. 120.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 196, in the last sentence in paragraph (1)(a), deleted “or earned administrative leave” following “compensatory time”; inserted the federal reference in paragraphs (1)(b) and (1)(c); and in paragraph (1)(c), inserted “or who are designated as exempt under any other complete exemption in federal law.”

The 2010 amendment, by ch. 72, substituted “eighty (80) hours” for “forty (40) hours” in the first sentence of paragraph (2)(g).

Effective Dates.

Section 2 of S.L. 2010, ch. 72 declared an emergency retroactively to January 1, 2010 and approved March 24, 2010.

67-5342A. Severance pay — Purchase of membership service prohibited. — The provisions of this section shall apply to classified or exempt state employees of the legislative and executive branches of government. For purposes of this chapter, the term “severance pay” as provided for in section 67-5342, Idaho Code, shall include any payment by an employer toward the purchase of membership service pursuant to section 59-1363, Idaho Code. Provided however, that nothing in this section shall change any rights provided pursuant to section 59-1362, Idaho Code, related to active duty service.

History.

I.C., § 67-5342A, as added by 2010, ch. 173, § 1, p. 356.

CHAPTER 54

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

SECTION.

67-5404. Compensation.

67-5404. Compensation. — Members of the commission shall be compensated as provided by section 59-509(h), Idaho Code[,] or as provided by section 59-509(n), Idaho Code, pursuant to a one (1) time irrevocable election made in writing by the member.

History.

1967, ch. 373, § 4, p. 1071; am. 1980, ch.

247, § 88, p. 582; am. 1990, ch. 33, § 1, p. 48; am. 2012, ch. 115, § 3, p. 317.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 115, added “or as provided by section 59-509(n), Idaho Code, pursuant to a one (1) time irrevocable election made in writing by the member.”

Compiler's Notes.

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

Effective Dates.

Section 4 of S.L. 2012, ch. 115 declared an emergency. Approved March 23, 2012.

CHAPTER 57

DEPARTMENT OF ADMINISTRATION

SECTION.

- 67-5709. Management of state facilities.
 67-5709B. Development of facilities. [Null and void, effective June 30, 2014.]
 67-5711C. Construction of public projects — Competitive sealed bidding.
 67-5711D. Energy savings performance contracts.
 67-5711F. Capitol building projects — Chapter 10, title 44, Idaho Code, inapplicable. [Null and void.]
 67-5716. Definitions of terms.
 67-5718. Requisitions for property — Notice — Form — Guarantee — Procedure for bidding.
 67-5728. Procuring and purchasing by state institution of higher education.
 67-5732A. Disposal of surplus personal property authorized.
 67-5745. Declaration of purpose.
 67-5745B. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services.
 67-5745C. General powers and duties of the authority.

SECTION.

- 67-5745D. Idaho education network.
 67-5745E. Idaho education network program and resource advisory council (IPRAC).
 67-5747. Powers and duties.
 67-5751. Records management. [Repealed.]
 67-5751A. Historical records. [Repealed.]
 67-5752. Records management manual. [Repealed.]
 67-5753. Microfilming services. [Repealed.]
 67-5761. Powers and duties — Group insurance.
 67-5761B. State contribution to state employee health savings accounts.
 67-5767. Director may provide service to school districts, public community colleges, public colleges, public universities or other political subdivisions.
 67-5779. Definitions.
 67-5780. Integrated property records system — Transfer of responsibility.
 67-5781. Agencies to provide records and data.
 67-5782. Responsibility for quality.

67-5709. Management of state facilities. — (1) In addition to the authority granted by section 67-1603, Idaho Code, the director of the department of administration shall have exclusive control of the capitol mall properties identified in subsection (2) of this section and shall have authority to promulgate rules relating to use of those properties, including the authority to promulgate rules requiring a permit for various uses of the capitol mall properties. Violations of rules promulgated under this section shall be infractions. The director shall have authority to sue to enjoin any threatened or continuing violation of such rules.

(2) Except as otherwise provided by law, the capitol mall properties shall include state of Idaho lands and buildings, together with any appurtenant grounds and systems including, but not limited to, electrical, plumbing, sewer, water, heating, ventilation and air conditioning systems as well as geothermal systems and tunnels, located between blocks one (1) and one

hundred thirty-six (136) as shown on the Boise City original townsite plat filed in the Ada County recorder's office in book 1 on page 1. Subject to the following, the capitol mall properties shall be identified in rules promulgated pursuant to this section:

(a) At a minimum, the capitol mall properties shall consist of the following grounds, buildings, improvements and real property in Boise, Idaho: Joe R. Williams (700 W. State street), Len B. Jordan (650 W. State street), Pete T. Cenarrusa (450 W. State street), Division of Public Works (502 N. 4th street), Alexander House (304 W. State street), State Library (325 W. State street), Secretary of State (450 N. 4th street), 954 Jefferson (954 W. Jefferson street), Capitol Annex (514 W. Jefferson street), Borah Building (304 N. 8th street), and Steunenberg Monument Park (intersection of Capitol boulevard and Bannock street), and the Idaho Supreme Court (451 W. State street); provided, that the Idaho supreme court may regulate uses at the Idaho supreme court building and its grounds.

(b) The parking facilities, including appurtenant grounds and systems, at the following locations in Boise, Idaho, shall also be within the capitol mall properties: West State street parking facility, occupying block 101 as shown on the Boise City original townsite plat; 3rd street and Washington street parking facility, occupying a portion of block 105 as shown on the Boise City original townsite plat; 6th street and Washington street parking facility, occupying a portion of block 96 as shown on the Boise City original townsite plat; 8th street and Jefferson street parking facility, occupying a portion of block 66 as shown on the Boise City original townsite plat; and 10th street and Jefferson parking facility, occupying a portion of block 68 as shown on the Boise City original townsite plat.

(c) The space within the interior of the capitol building shall be allocated and controlled as set forth in section 67-1602, Idaho Code; provided however, that the executive and legislative departments may subject all or a part of such space to the rules promulgated pursuant to this section as set forth in subsection (3) of this section.

(3) Rules promulgated pursuant to this section shall apply to properties not within the capitol mall properties upon the request of the state of Idaho public entity owning or controlling the property. When such a request has been made, the property subject to the request shall be identified by the director of the department of administration in rules promulgated under this section. Violations of the rules adopted under this section shall be infractions. The director of the department of administration and the governing authority of the requesting entity shall have the authority to sue to enjoin any threatened or continuing violation of such rules. All state law enforcement personnel, any sheriff or deputy sheriff in a county in which the property is located and any police officer in a city in which the property is located shall have authority to enforce the rules for that property.

(4) Responsibility for law enforcement at the capitol mall properties is vested in the director of the Idaho state police. In coordination with the director of the Idaho state police, Ada County and the city of Boise are granted jurisdiction to enforce the laws of the state of Idaho, the ordinances of Ada County, the ordinances of the city of Boise and the rules promulgated

pursuant to this section. The director of the department of administration, or his designee, shall be responsible for security at the capitol mall properties and has the authority to contract with private contractors to provide security for persons and property at the capitol mall properties.

(5) The director of the department of administration may pay personnel costs and operating expenditures incurred in the operation and management of the capitol mall properties and the multi-agency facilities constructed through the state building authority from the rents received therefrom. Proceeds accruing from such rental contracts and lease agreements after payment of personnel costs and operating expenditures which are in excess of two hundred thousand dollars (\$200,000) at the end of the fiscal year shall be deposited to the credit of the permanent building account. Proceeds from the rental of parking spaces at the capitol mall shall be deposited upon receipt to the credit of the permanent building account. Said proceeds shall not be expended without an appropriation and shall only be appropriated for the security, maintenance and upkeep of the capitol mall properties.

(6) Nothing contained in this section shall be deemed to give the department of administration control or management over the garden level, the first, third or fourth floors of the state capitol building which are vested with the legislative branch of government.

History.

I.C., § 67-5709, as added by 1974, ch. 34, § 2, p. 988; am. 1981, ch. 186, § 1, p. 331; am.

1998, ch. 149, § 3, p. 518; am. 2012, ch. 194, § 1, p. 523.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 194, designated the existing provisions as subsection (5) and added subsections (1) through (4) and (6).

Compiler's Notes.

Section 2 of S.L. 2012, ch. 194 provided: "Within thirty (30) days of the effective date of this act [March 30, 2012], the director of the Department of Administration shall promul-

gate rules pertaining to the use of the Capitol Mall properties; provided however, such rules may not take effect until thirty (30) days after the effective date of this act."

The street addresses enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2012, ch. 194 declared an emergency. Approved March 30, 2012.

67-5709B. Development of facilities. [Null and void, effective June 30, 2014.] — To the extent funds are available therefor, the administrator of the division of public works shall develop state-owned facilities or facilities constructed through the state building authority within the state capitol mall. The state capitol mall shall include the capitol mall properties set forth in section 67-5709, Idaho Code, or in rules promulgated pursuant thereto. Notwithstanding any other provisions of law to the contrary, the director of the department of administration, subject to the approval of the permanent building fund advisory council, may exempt the parking facility at 6th Street and Washington Street occupying block 96 as shown on the Boise City original townsite plat from local land use planning ordinances established pursuant to chapter 65, title 67, Idaho Code. Neither the designation of facilities as exempt from local land use planning ordinances

by the director nor the approval of the permanent building fund advisory council shall be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 67-5709B, as added by 2013, ch. 337,
§ 1, p. 876.

STATUTORY NOTES**Cross References.**

Division of public works, § 67-5705.
Permanent building fund advisory council,
§ 67-5710.
State building authority, § 67-6401 et seq.

"An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and shall be null, void and of no force and effect on and after June 30, 2014." Approved April 11, 2013.

Effective Dates.

Section 2 of S.L. 2013, ch. 337, provided:

67-5711C. Construction of public projects — Competitive sealed bidding. — (1) All construction contracts for public works shall be awarded to the lowest responsible and responsive bidder after receipt of competitive sealed bidding except as otherwise provided in sections 67-5711B, 67-5711D and 67-5713, Idaho Code.

(2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public works.

(3) Adequate public notice of the invitation for bids shall be given at least fourteen (14) days prior to the date set forth therein for the opening of bids. Such notice shall include publication at least fourteen (14) days prior to bid opening in a newspaper of general circulation in the area where the work is located.

(4) When prequalification is deemed by the department and by the respective state agency to be in the best interest of the state, competitive bidding procedures shall be open only to licensed public works contractors that meet preliminary supplemental qualifications. The solicitation for bids in a prequalified bidder public works project shall consist of two (2) stages, an initial stage for identifying prequalified contractors, either prime or specialty contractors, followed by a stage during which bid prices will be accepted only from prequalified contractors. Notice of the prequalification stage shall be given in the same manner that notice of open competitive bidding is provided. Prequalification standards must be premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the state, past performance (related to quality, workmanship and timeliness), reliability, safety record, available nonfinancial resources, equipment and personnel as they relate to the subject project, and overall performance history based upon a contractor's entire body of work. Any request for qualifications must include the standards for evaluating the qualifications of prospective bidders. Licensed contractors desiring to be prequalified to bid on a project must submit a written response to a request for qualifications. After a review of qualification submittals, licensed contractors that meet the prequalification stan-

dards shall be so notified and licensed contractors that do not meet the prequalification standards shall also be so notified. Thereafter, bids may be solicited from contractors that meet the prequalification standards. The department may promulgate rules or develop procedures to implement the prequalification process.

(5) Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record and the record shall be open to public inspection. After the time of the award all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(6) With respect to a project having a written cost estimate of greater than twenty-five thousand dollars (\$25,000) but less than the public works limit established in section 67-5711, Idaho Code, the agency, if it does not perform the work with existing physical plant staff, must award a written contract to the lowest responsible and responsive bidder after soliciting at least three (3) documented informal bids from contractors licensed in Idaho to perform public works contracts, if reasonably available. Adequate public notice of the invitation for informal bids shall be given at least seven (7) days prior to the date set forth therein for the receipt of the informal bids. Such notice may include publication at least seven (7) days prior to bid opening in a newspaper of general circulation in the area where the work is located; or the agency may advertise the invitation for bids in appropriate trade journals, and otherwise notify persons believed to be interested in the award of a contract. Informal bids must be submitted by the contractor in writing in response to a prepared written document describing the project's scope of work in sufficient detail so as to enable a contractor familiar with such work to prepare a responsible bid. Nothing herein exempts an agency from the responsibility of utilizing formal plans and specifications if the work involves the public health or safety as described in chapters 3 and 12, title 54, Idaho Code. The agency must document receipt of the informal bids in the project file.

(7) Any personal property including goods, parts, supplies and equipment which is to be supplied or provided by a state agency for use in any public work, project, or preventive maintenance programs, whether the public work, project, or preventive maintenance program is constructed, undertaken or performed by agency in-house personnel, or by delegation pursuant to section 67-5710A, Idaho Code, or otherwise provided or supplied by the agency to a contractor, the personal property, goods, parts, supplies or equipment supplied or provided by the agency must be purchased or procured by the agency through the division of purchasing in accordance with the Idaho Code.

History.

I.C., § 67-5711C, as added by 1991, ch. 164, § 2, p. 393; am. 1992, ch. 136, § 1, p. 424; am.

2001, ch. 213, § 2, p. 839; am. 2005, ch. 213, § 40, p. 637; am. 2010, ch. 345, § 1, p. 902.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 345, in subsection (4), in the first sentence, inserted “by the department and by the respective state agency to be,” in the fourth sentence, inserted “past performance (related to quality, workmanship and timeliness), reliability, safety record” and in the sixth sentence, inserted

“so” and added “and licensed contractors that do not meet the prequalification standards shall also be so notified.”

Effective Dates.

Section 2 of S.L. 2010, ch. 345 declared an emergency. Approved April 12, 2010.

67-5711D. Energy savings performance contracts. — (1) Definitions. As used in this section:

(a) “Cost-savings measure” means any facility improvement, repair or alteration to an existing facility, or any equipment, fixture or furnishing to be added or used in any existing facility that is designed to reduce energy consumption and energy operating costs or increase the energy efficiency of facilities for their appointed functions that are cost effective. “Cost-savings measure” includes, but is not limited to, one (1) or more of the following:

(i) Procurement of low-cost energy supplies of all types, including electricity, natural gas and water;

(ii) Insulating the building structure or systems in the building;

(iii) Storm windows or doors, caulking or weather stripping, multiglazed windows or door systems, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(iv) Automated or computerized energy control systems;

(v) Heating, ventilation or air conditioning system modifications or replacements;

(vi) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system;

(vii) Energy recovery systems;

(viii) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(ix) Installing new or modifying existing day lighting systems;

(x) Installing or modifying renewable energy and alternate energy technologies;

(xi) Building operation programs that reduce energy costs including, but not limited to, computerized programs, training and other similar activities;

(xii) Steam trap improvement programs that reduce energy costs;

(xiii) Devices that reduce water consumption; and

(xiv) Any additional building infrastructure improvements that produce energy cost savings, significantly reduce energy consumption or increase the energy efficiency of the facilities for their appointed functions and are in compliance with all applicable state building codes.

(b) “Director” means the director of the department of administration or the director’s designee.

(c) "Energy cost savings" means any expenses that are eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service company or a qualified provider, but does not include merely shifting personnel costs or similar short-term cost savings.

(d) "Financial grade energy audit" means a comprehensive building energy systems audit performed by a professional engineer licensed in the state of Idaho for the purpose of identifying and documenting feasible energy and resource conservation measures and cost-savings factors.

(e) "Performance contract" means a contract between the director or the public entity and a qualified provider or a qualified energy service company for evaluation, recommendation and implementation of one (1) or more cost-savings measures. A performance contract may be structured as either:

(i) A guaranteed energy savings performance contract, which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented. Guaranteed annual savings must meet or exceed the total annual contract payments made by the director or the user agency or the public entity for such contract, including financing charges to be incurred over the life of the contract; or

(ii) A shared savings contract, which shall include provisions mutually agreed upon by the director and the qualified provider or qualified energy service company as to the rate of payments based upon energy cost savings and a stipulated maximum energy consumption level over the life of the contract.

(f) "Person" means an individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entity as recognized by the state of Idaho.

(g) "Public entity" means the cities, counties and school districts or any political subdivision within the state of Idaho.

(h) "Qualified energy service company" means a person with a record of established projects or with demonstrated technical, operational, financial and managerial capabilities to implement performance contracts and who currently holds an Idaho public works contractor license appropriate for the work being performed.

(i) "Qualified provider" means a person who is experienced in the design, implementation and installation of energy efficiency and facility improvement measures, who has the ability to secure necessary financial measures to support energy savings guarantees and the technical capabilities to ensure such measures generate energy cost savings, and who currently holds an Idaho public works contractor license appropriate for the work being performed.

(2) Performance contracts. The director of the department of administration, subject to the approval of the permanent building fund advisory council, or any Idaho public entity may enter into a performance contract with a qualified provider or qualified energy service company to reduce energy consumption or energy operating costs. Cost-savings measures

implemented under such contracts shall comply with all applicable state and local building codes.

(3) Requests for qualifications. The director of the department of administration or the public entity shall request qualifications from qualified providers and qualified energy service companies inviting them to submit information describing their capabilities in the areas of:

- (a) Design, engineering, installation, maintenance and repairs associated with performance contracts;
- (b) Experience in conversions to a different energy or fuel source, so long as it is associated with a comprehensive energy efficiency retrofit;
- (c) Postinstallation project monitoring, data collection and reporting of savings;
- (d) Overall project experience and qualifications;
- (e) Management capability;
- (f) Ability to assess the availability of long-term financing;
- (g) Experience with projects of similar size and scope; and
- (h) Other factors determined by the director or the public entity to be relevant and appropriate relating to the ability of the qualified provider or qualified energy service company to perform the project.

(4) Notice. Adequate public notice of the request for qualifications shall be given at least fourteen (14) days prior to the date set forth therein for the opening of the responses to the request for qualifications. Such notice may be provided electronically or by publication in a newspaper of general circulation in the area where the work is located.

(5) Public inspection. All records of the department or an agency or the public entity relating to the award of a performance contract shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(6) Award of performance contract.

(a) The director or public entity shall select up to three (3) qualified providers or qualified energy service companies who have responded to the request for qualifications. Factors to be considered in selecting the successful qualified provider or qualified energy service company shall include, but not be limited to:

- (i) Fee structure;
- (ii) Contract terms;
- (iii) Comprehensiveness of the proposal and cost-savings measures;
- (iv) Experience of the qualified provider or qualified energy service company;
- (v) Quality of the technical approach of the qualified provider or qualified energy service company; and
- (vi) Overall benefits to the state or the public entity.

(b) Notwithstanding the provisions of section 67-5711C, Idaho Code, the director or the public entity may, following the request for qualifications and the expiration of the specified notice period, award the performance contract to the qualified provider or qualified energy service company which best meets the needs of the project and whose proposal may or may not represent the lowest cost among the proposals submitted pursuant to this section.

(c) Upon award of the performance contract, the successful qualified provider or qualified energy service company shall prepare a financial grade energy audit which, upon acceptance by the director or the public entity, shall become a part of the final performance contract.

(7) Installment payment and lease-purchase agreements. Pursuant to this section, the director or the public entity may enter into a performance contract, payments for which shall be made by the user agency or public entity. Such performance contracts may be financed as installment payment contracts or lease-purchase agreements for the purchase and installation of cost-savings measures. Financing implemented through another person other than the qualified provider or qualified energy service company is authorized.

(8) Terms of performance contract.

(a) Each performance contract shall provide that all payments between parties, except obligations upon termination of the contract before its expiration, shall be made over time and that the objective of such performance contract is the implementation of cost-savings measures and energy cost savings.

(b) A performance contract, and payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective, subject to appropriation by the legislature or by the public entity, for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed twenty-five (25) years. The permissible length of the contract may also reflect the useful life of the cost-savings measures.

(c) Performance contracts may provide for payments over a period of time not to exceed deadlines specified in the performance contract from the date of the final installation of the cost-savings measures.

(d) Performance contracts entered pursuant to this section may be amended or modified, upon agreement by the director or the public entity and the qualified provider or qualified energy service company, on an annual basis.

(9) Monitoring and reports. During the term of each performance contract, the qualified provider or qualified energy service company shall monitor the reductions in energy consumption and cost savings attributable to the cost-savings measures installed pursuant to the performance contract and shall annually prepare and provide a report to the director or the public entity documenting the performance of the cost-savings measures.

History.

I.C., § 67-5711D, as added by 2001, ch. 213, § 3, p. 839; am. 2004, ch. 15, § 1, p. 12; am. 2008, ch. 366, § 1, p. 1001.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 366, in the first sentence in the introductory paragraph in paragraph (1)(a), inserted “to an existing

facility” and “existing”; and at the ends of paragraphs (1)(h) and (1)(i), added “appropriate for the work being performed.”

67-5711F. Capitol building projects — Chapter 10, title 44, Idaho Code, inapplicable. [Null and void.]

Null and void, pursuant to S.L. 2008, ch. 54, § 2, effective June 30, 2010.

History.

I.C., § 67-5711F, as added by 2008, ch. 54,
§ 1, p. 137.

67-5716. Definitions of terms. — (1) Acquisition. The process of procuring or purchasing property by the state of Idaho.

(2) Procurement. Obtaining property for state use by lease, rent, or any manner other than by purchase or gift.

(3) Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property.

(4) Goods. Items of personal property, not qualifying as equipment, parts or supplies.

(5) Services. Personal services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding is not prohibited or made impractical by statute, rules or generally accepted ethical practices.

(6) Parts. Items of personal property acquired for repair or replacement of unserviceable existing items.

(7) Supplies. Items of personal property having an expendable quality or during their normal use are consumed and which require or suggest acquisition in bulk.

(8) Equipment. Items of personal property which have a normal useful life expectancy of two (2) or more years.

(9) Component. An item of property normally assembled with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities.

(10) Vendor. A person or entity capable of supplying property to the state.

(11) Bidder. A vendor who has submitted a bid on a specific item or items of property to be acquired by the state.

(12) Lowest responsible bidder. The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.

(13) Contractor. A bidder who has been awarded an acquisition contract.

(14) Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction, and, as provided in section 67-5728,

Idaho Code, excluding Lewis-Clark State College, Idaho State University, Boise State University and Eastern Idaho Technical College.

(15) Bid. A written offer to perform a contract to purchase or supply property or services in response to an invitation for bid or request for proposal.

(16) Recyclable. Materials that still have useful physical, chemical or biological properties after serving their original purposes and can, therefore, be reasonably reused or recycled for the same or other purposes.

(17) Recycled-content product. A product containing postconsumer waste and/or secondary waste as defined in this section.

(18) Postconsumer waste. A finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item.

(19) Secondary waste. Fragments of products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value and may include a postconsumer waste.

(20) Open contract. A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure or purchase specified property under the terms and conditions set forth in the contract.

History.

I.C., § 67-5716, as added by 1975, ch. 254, § 2, p. 686; am. 1994, ch. 180, § 221, p. 420;

am. 1996, ch. 198, § 1, p. 616; am. 2000, ch. 316, § 1, p. 1064; am. 2001, ch. 36, § 1, p. 55; am. 2010, ch. 286, § 1, p. 766.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 286, in subsection (14), added "and, as provided in section 67-5728, Idaho Code, excluding Lewis-Clark State College, Idaho State University, Boise State University and Eastern Idaho Technical College"; and added subsection (20).

"The provisions of this act shall be null, void and of no force and effect on and after July 1, 2013." However, S.L. 2013, ch. 30, § 1 repealed S.L. 2010, ch. 286, § 3, effective July 1, 2013, leaving the amendment by S.L. 2010, ch. 286, § 1 in effect.

Compiler's Notes.

Section 3 of S.L. 2010, ch. 286 provided

67-5718. Requisitions for property — Notice — Form — Guarantee — Procedure for bidding. — (1) The administrator of the division of purchasing shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been submitted to his office by the requisitioning agency, certifying to the satisfaction of the administrator that there are proper funds or sufficient balance in appropriations out of which the amount of the requisition may lawfully be paid, except as provided to the contrary under provisions of this chapter allowing emergency purchases.

(2) Notice shall be posted of all acquisitions of property, unless otherwise excepted by rules of the division. The notice may be posted electronically. The administrator shall also cause all invitations to bid and requests for proposals to be posted manually in a conspicuous place in the office. The notice shall describe the property to be acquired in sufficient detail to

apprise a bidder of the exact nature or functionality of the property required; and shall set forth the bid opening date, time and location.

(3) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in section 67-2349, Idaho Code.

(4) All sealed bids received shall be opened at the time and place specified, and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to and orders placed with the lowest responsible bidder on the basis of initial proposals received or, if applicable, following receipt and evaluation of best and final offers or negotiations. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

(5) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

(6) As used in this section, the word "sealed" does not preclude acceptance of electronically sealed and submitted bids in addition to bids manually sealed and submitted.

History.

I.C., § 67-5718, as added by 1975, ch. 254, § 2, p. 686; am. 1978, ch. 347, § 2, p. 902; am. 1986, ch. 264, § 1, p. 683; am. 1993, ch. 306, § 1, p. 1135; am. 1994, ch. 242, § 1, p. 760; am. 1996, ch. 198, § 3, p. 616; am. 2001, ch. 36, § 3, p. 55; am. 2001, ch. 183, § 35, p. 613; am. 2007, ch. 90, § 30, p. 246.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 90, deleted "[20]" following the second occurrence of "shall" in the last sentence of subsection (2), which was left over after conforming the two 2001 amendments.

67-5728. Procuring and purchasing by state institution of higher education. — (1) For the purposes of this section, "state institution of higher education" means Lewis-Clark State College, Idaho State University, Boise State University and Eastern Idaho Technical College.

(2) Any state institution of higher education may establish policies and procedures for procuring and purchasing property that shall be substantially consistent with the requirements for procuring and purchasing property as set forth in this chapter and that shall be approved by the state board of education. When the state board of education has approved such policies and procedures for a state institution of higher education, such institution shall not be subject to the provisions of this chapter, except as provided in subsection (3) of this section.

(3) When the state enters into an open contract, no state institution of higher education that has established policies and procedures pursuant to subsection (2) of this section shall fail to utilize such contract without

justifiable cause for such action, pursuant to the provisions of subsection (4) of section 67-5726, Idaho Code.

History.

I.C., § 67-5728, as added by 2010, ch. 286,
§ 2, p. 766.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2010, ch. 286 provided
"The provisions of this act shall be null, void
and of no force and effect on and after July 1,

2013." However, S.L. 2013, ch. 30, § 1 re-
pealed S.L. 2010, ch. 286, § 3, effective July 1,
2013, leaving the enactment by S.L. 2010, ch.
286, § 2, in effect.

67-5732A. Disposal of surplus personal property authorized. —
Whenever the head of any commission, board, council, task force, committee or department of state government, or any institution of the state, or any elected state official, has under their jurisdiction or control, any personal property belonging to the state which, in their judgment, is of no further use to the state or to such commission, board, council, task force, committee, department, institution or state office, they may sell, transfer, recycle or discard such personal property in the name of the state and in accordance with the internal management policies and procedures of the board of examiners. The board of examiners shall adopt internal management policies and procedures for the disposal of state surplus personal property to efficiently dispose of surplus personal property, to allow conveyance of surplus personal property to other state, federal and local agencies, to offer state surplus personal property for sale to the public at large and to provide for maximum value received by the state of Idaho with attendant benefits to its citizens. Provided that when sales will be offered to the public and sold to the highest responsible bidder, notice of such sale shall be published in at least a newspaper of general circulation in accordance with section 60-106, Idaho Code, for at least two (2) weeks prior to such offering.

History.

I.C., § 67-5732A, as added by 1991, ch. 158,

§ 7, p. 374; am. 2003, ch. 31, § 3, p. 114; am.
2011, ch. 59, § 1, p. 123.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 59, inserted

"federal" preceding "and local agencies" near
the middle of the second sentence.

67-5745. Declaration of purpose. — The legislature finds that advances in information technology and telecommunications present significant opportunities for the state of Idaho to improve the efficiency and productivity of state government, to encourage public access to government information and to enhance lifelong educational and training opportunities. The implications of these information technology and telecommunications advances require a centralized and coordinated strategic planning process involving the expertise and participation of experienced persons from both state government and the private sector. The establishment of the Idaho

technology authority will facilitate a centralized approach to the acquisition and evaluation of necessary technical information and the informed development of a statewide strategic plan to ensure a coordinated approach to the design, procurement and implementation of information technology and telecommunications systems for both state government and the public.

History.

I.C., § 67-5745, as added by 1996, ch. 115,
§ 2, p. 424; am. 2013, ch. 173, § 1, p. 400.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 173, substituted “state government” for “state and local government” in the first and second sentences; deleted “to promote, develop and di-

versify its economy” preceding “to encourage” in the first sentence; and substituted “Idaho technology authority” for “information Idaho technology resource management council” in the third sentence.

67-5745B. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services. — (1) An Idaho technology authority is hereby created within the department of administration. The authority shall consist of up to seventeen (17) members. The governor shall appoint up to two (2) members of the authority that shall include an information technology executive from private industry and an employee of state government. The remaining membership of the authority shall be comprised of the following: one (1) legislator appointed by the president pro tempore of the senate and one (1) legislator appointed by the speaker of the house of representatives to include one (1) legislator from each of the two (2) largest parties; one (1) person appointed by the chief justice of the supreme court to represent the judicial branch of state government; the state controller; the director of the department of health and welfare; the director of the department of labor; the director of the transportation department; the director of the Idaho state police; the director of the department of correction; the chairman of the Idaho geospatial council executive committee; the director of the legislative services office; the chief technology officer of the department of administration; the administrator of the division of financial management in the office of the governor; the executive director of the state board of education; and the adjutant general of the military division in the office of the governor. The governor shall designate a member of the authority to act as chairman and all appointed members of the authority shall serve at the pleasure of the appointing authority. An agency director may delegate responsibility to serve as a member of the authority to another senior management executive within the agency with authority for general agency operations whose responsibilities may include, but not be limited to, information technology operations.

(2) The authority shall hold no fewer than two (2) regular meetings annually at such time and place as may be directed by its chairman. The authority may meet more frequently at the call of the chairman or if requested by a majority of the authority’s members. Members of the

authority shall serve with no salary or benefits, but are entitled to reimbursement as provided in section 59-509(b), Idaho Code.

(3) The authority may contract for professional services or assistance when necessary or desirable to carry out its powers and duties.

History.

I.C., § 67-5745B, as added by 1996, ch. 115,
§ 2, p. 424; am. 2013, ch. 173, § 2, p. 400.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 173, substituted "Idaho technology authority" for "information Idaho technology resource manage-

ment council" and "authority" for "council" throughout the section and rewrote subsection (1).

67-5745C. General powers and duties of the authority. — The authority shall:

(1) Review and evaluate the information technology and telecommunications systems presently in use by state agencies;

(2) Prepare statewide short-range and long-range information technology and telecommunications systems plans to meet the needs of state agencies;

(3) Within the context of its strategic plans, establish statewide information technology and telecommunications policies, standards, guidelines, conventions and comprehensive risk assessment criteria that will assure uniformity and compatibility of such systems within state agencies;

(4) Recommend and coordinate the use and application of state agencies' information technology and telecommunications resources;

(5) Review and approve large-scale information technology and telecommunications projects including, but not limited to, risk assessment methodologies used by state agencies using authority risk assessment criteria, for state agencies;

(6) Review state agencies' compliance with statewide information technology and telecommunications systems plans;

(7) Recommend cost-efficient procedures for state agencies' acquisition and procurement of information technology and telecommunications systems;

(8) Upon request, provide technical expertise to state government and any other governmental entity;

(9) Maintain a continuous and comprehensive inventory of information technology and telecommunications systems within state agencies;

(10) In accordance with statutes governing the availability or confidentiality of public records and information, establish guidelines for the accessing of public information by the public;

(11) On an annual basis, publish a report of the activities of the authority for provision to the governor and the legislature;

(12) Recommend the enactment or promulgation of any statutes or rules necessary to carry out the statewide information technology and telecommunications systems plans;

(13) Enter into contracts for professional services and assistance not otherwise available in state government;

(14) Encourage and promote cooperative information technology efforts and activities between the state, local government, private enterprise and the public;

(15) Encourage and support education and training opportunities relating to information technology and telecommunications; and

(16) Appoint subcommittees, delegate responsibilities and perform any additional functions consistent with the purpose of this act which are necessary and appropriate for the proper conduct of the authority.

History.

I.C., § 67-5745C, as added by 1996, ch. 115, § 2, p. 424; am. 1998, ch. 174, § 1, p. 614; am.

2002, ch. 310, § 1, p. 883; am. 2013, ch. 173, § 3, p. 400.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 173, substituted “authority” for “council” in the section heading and throughout the section; deleted former subsection (14) which read: “Encourage and promote the development and growth of the information technology industry in the

state in accordance with sound business principles and practices” and redesignated the subsequent subsections accordingly; inserted “local government” in current subsection (14); and added “Appoint subcommittees, delegate responsibilities and” to the beginning of subsection (16).

67-5745D. Idaho education network. — (1) The legislature finds that:

- (a) Idaho does not have a statewide coordinated and funded high-bandwidth education network;
- (b) Such a network will enable required and advanced courses, concurrent enrollment and teacher training to be deliverable to all public high schools through an efficiently-managed statewide infrastructure; and
- (c) Aggregating and leveraging demand at the statewide level will provide overall benefits and efficiencies in the procurement of telecommunications services, including high-bandwidth connectivity, internet access, purchases of equipment, federal subsidy program expertise and other related services.

(2) As used in this section and in section 67-5745E, Idaho Code, “Idaho Education Network (IEN)” means the coordinated, statewide telecommunications distribution system for distance learning for each public school, including two-way interactive video, data, internet access and other telecommunications services for providing distance learning. The term also includes connections to each institution of higher education and other locations as necessary to facilitate distance education, teacher training and other related services.

History.

I.C., § 67-5745D, as added by 2008, ch. 260,

§ 3, p. 754; am. 2009, ch. 131, § 2, p. 410; am. 2010, ch. 357, § 2, p. 935.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 131, in subsection (6)(a), inserted “and the Idaho digital

learning academy as provided for in chapter 55, title 33, Idaho Code”; rewrote subsection (7), removing certain duties of the depart-

ment of education and providing certain department of administration duties; and, in subsection (8), substituted "policies" for "policy" and added "and the state department of education".

The 2010 amendment, by ch. 357, in subsection (2), inserted "and in section 67-5745E, Idaho Code"; and deleted subsections (3) through (9), removing language providing for governance and operations of the Idaho Education Network and for the Idaho Education Network fund.

Legislative Intent.

Section 1 of S.L. 2008, ch. 260 provided "Legislative Findings. The Legislature finds that:

"(1) High-bandwidth connectivity is an essential component of education infrastructure in the 21st century;

"(2) Idaho is behind in the use of high-bandwidth connectivity and technology to deliver educational opportunities to students and teachers;

"(3) High-bandwidth connectivity and technology can enable advanced and specialized courses to be shared within or among school districts and allow students access to concurrent enrollment offered by higher education; and

"(4) A common high-bandwidth connectivity and technology platform will enable scarce educational resources to be shared throughout the state."

Effective Dates.

Section 4 of S.L. 2010, ch. 357 declared an emergency. It became law without the signature of the governor. Approved April 12, 2010.

67-5745E. Idaho education network program and resource advisory council (IPRAC). — (1) The administrative oversight for the Idaho education network (IEN) shall be provided by the Idaho education network program and resource advisory council (IPRAC) that is hereby created within the department of administration. The IPRAC shall be composed of thirteen (13) members, as follows:

- (a) The superintendent of public instruction or his designee, who shall serve as the chairman of the council;
- (b) The director of the department of administration or his designee, who shall serve as vice chairman of the council;
- (c) The chief executive officer of the Idaho digital learning academy;
- (d) Two (2) individuals appointed by the superintendent of public instruction representing public and higher education in Idaho, selected for their knowledge and experience in the development and technology necessary for the procurement and/or ongoing operation of a network that will enable the delivery of educational materials and resources. One (1) of the individuals appointed by the superintendent of public instruction shall serve an initial term of one (1) year and one (1) of such individuals shall serve an initial term of two (2) years, as determined by the superintendent. After such initial terms, these individuals shall serve four (4) year terms. Vacancies in such appointment shall be filled by appointment by the superintendent for the remaining term;
- (e) Two (2) individuals appointed by the superintendent of public instruction to represent the private sector. One (1) of the individuals appointed by the superintendent of public instruction shall serve an initial term of two (2) years and one (1) of such individuals shall serve an initial term of three (3) years, as determined by the superintendent. After such initial terms, these individuals shall serve terms of four (4) years. Vacancies in such appointment shall be filled by appointment by the superintendent for the remaining term;
- (f) The chairman of the senate education committee or his designee;
- (g) The chairman of the house of representatives education committee or his designee; and

(h) Four (4) members of the joint finance-appropriations committee, appointed by the president pro tempore of the senate and the speaker of the house of representatives in consultation with the cochairmen of the joint finance-appropriations committee, with one (1) such appointee being a member of the minority political party.

(2) In performing the duties pursuant to this section, IPRAC shall consider the following goals to ensure that:

(a) Idaho will utilize technology to facilitate comparable access to educational opportunities for all students;

(b) Idaho will be a leader in the use of technology to deliver advanced high school curricula, concurrent college credit, and ongoing teacher training on an equitable basis throughout the state; and

(c) Idaho will leverage its statewide purchasing power for the IEN to promote private sector investment in telecommunications infrastructure that will benefit other technology applications such as telemedicine, telecommuting, telegovernment and economic development.

(3) In performing the duties pursuant to this section, subject to the availability of funds, the IPRAC shall:

(a) Coordinate the development, outsourcing and implementation of a statewide network for education, which shall include high-bandwidth connectivity, two-way interactive video and internet access, using primarily fiber optic and other high-bandwidth transmission media;

(b) Consider statewide economic development impacts in the design and implementation of the educational telecommunications infrastructure;

(c) Coordinate and support the telecommunications needs, other than basic voice communications of public education;

(d) Procure high-quality, cost-effective internet access and appropriate interface equipment to public education facilities;

(e) Procure telecommunications services and equipment on behalf of public education;

(f) Procure and implement technology and equipment for the delivery of distance learning;

(g) In conjunction with the state department of education, apply for state and federal funding for technology on behalf of IEN services;

(h) Procure telecommunications services and equipment for the IEN through an open and competitive bidding process;

(i) Establish a technical subcommittee of the IPRAC to advise and assist the IPRAC in the technical development and operation of the IEN as required pursuant to this section. Members of the technical subcommittee shall be selected for their knowledge and experience in the development and technology necessary for the procurement and/or ongoing operation of a network that will enable the delivery of educational materials and resources, as provided in this section;

(j) Establish other subcommittees to provide specific assistance to the IPRAC, as may be deemed expedient and necessary for such purpose;

(k) Work with the private sector to deliver high-quality, cost-effective services statewide; and

(l) Cooperate with state and local governmental and educational entities

and provide leadership and consulting for telecommunications for education.

(4) The IPRAC shall follow an implementation plan that:

(a) In the first phase, will connect each public high school with a scalable, high-bandwidth connection, including connections to each institution of higher education and the Idaho digital learning academy as provided for in chapter 55, title 33, Idaho Code, as necessary, thereby allowing any location on the IEN to share educational resources with any other location;

(b) Upon completion of the first phase, shall provide that each public high school will be served with high-bandwidth connectivity, internet access and equipment in at least one (1) two-way interactive video classroom; and

(c) In subsequent phases, will evaluate and make recommendations to the legislature for:

(i) Connectivity to each elementary and middle school;

(ii) The addition of libraries to the IEN; and

(iii) The migration of state agency locations from current technology and services.

(5) The IPRAC shall, in its administration of the provisions of this section, comply with all provisions of federal law and regulations necessary to obtain and maintain qualification of the IEN and its participating schools in order to enable receipt of federal universal service support funding and the federal e-rate discount program for schools and libraries including, but not limited to, maintenance of the IEN as a separate and distinct network to the extent necessary to obtain and maintain such qualification.

(6) Educational institutions served by the IEN shall manage site operations under policies established by the IPRAC and the state department of education.

(7) Idaho education network fund. There is hereby created in the state treasury the Idaho education network fund. Moneys in the fund shall consist of funds received from state appropriations, grants, federal moneys, donations or funds from any other source. Moneys in the fund may be expended, pursuant to appropriation, for implementation and ongoing costs of the IEN. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

(8) Members of the IPRAC or any associated subcommittee shall not be compensated for service as such member, but shall receive per diem and travel allowance as provided for state employees, in such amount as is provided for in section 67-2008, Idaho Code.

History.

I.C., § 67-5745E, as added by 2010, ch. 357,
§ 3, p. 935.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2010, ch. 357 declared an

emergency. It became law without the signature of the governor. Approved April 12, 2010.

67-5747. Powers and duties. — (1) The department of administration is hereby authorized and directed:

- (a)(i) To control and approve the acquisition and installation of all communications equipment and facilities for all departments and institutions of state government, except as provided in subparagraphs (ii), (iii) and (iv) of this subsection;
- (ii) To coordinate the acquisition and installation of all communications equipment and facilities for the institutions of higher education and the elected officers in the executive department;
- (iii) To coordinate the acquisition and installation of all communications equipment and facilities for the legislative and judicial departments;
- (iv) Provided however, that the acquisition and installation of all public safety and microwave equipment shall be under the control of the military division.

In approving or coordinating the acquisition or installation of communications equipment or facilities, the department shall first consult with and consider the recommendations and advice of the directors or executive heads of the various departments or institutions. Any acquisition or installation of any communications equipment or facilities that is contrary to the department's recommendation, or is not in harmony with the state's overall plan for communications and information sharing, shall be reported in writing to the governor and the legislature.

(b) To receive and hold, upon order of the board of examiners, physical custody and control of such existing communications equipment and facilities utilized by or in the possession of any department or institution, as may be necessary to carry out the purposes of this chapter.

(c) To provide a system of communications for all departments and institutions of state government. The department may prescribe adequate rules for the use of any communications equipment and facilities now in use or hereafter made available. Funds received pursuant to this subsection shall be appropriated for payment of communication and telephone charges incurred by the various agencies and institutions of state government.

(d) To provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the department may establish.

(e) To accept federal funds granted by congress or by executive order for all or any of the purposes of this chapter, as well as gifts and donations from individuals and private organizations or foundations.

History.

I.C., § 67-5747, as added by 1974, ch. 34, § 2, p. 988; am. 1981, ch. 77, § 1, p. 109; am. 1983, ch. 181, § 3, p. 491; am. 1993, ch. 221, § 5, p. 747; am. 1994, ch. 176, § 10, p. 402; am. 2007, ch. 292, § 4, p. 828.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 292, in para-

graph (1)(a)(i), inserted "and (iv)"; and added paragraph (1)(a)(iv).

67-5751. Records management. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 4, effective July 1, 2012.

History.

I.C., § 67-5751, as added by 1974, ch. 34,
§ 2, p. 988; am. 1994, ch. 176, § 11, p. 402.

67-5751A. Historical records. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 5, effective July 1, 2012.

History.

I.C., § 67-5751A, as added by 1975, ch. 177,
§ 2, p. 482.

67-5752. Records management manual. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 6, effective July 1, 2012.

History.

I.C., § 67-5752, as added by 1974, ch. 34,
§ 2, p. 988.

67-5753. Microfilming services. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 7, effective July 1, 2012.

History.

I.C., § 67-5753, as added by 1974, ch. 34,
§ 2, p. 988.

67-5761. Powers and duties — Group insurance. — (1) The director of the department of administration shall:

- (a) Establish an advisory committee to be comprised of program participants from the executive, legislative and judicial branches of state government. The advisory committee shall include one (1) active and one (1) retired employee representative. The director shall consult with the advisory committee in the performance of those duties as enumerated in subsection (2) of this section.
- (b) Promulgate rules for determining eligibility of active personnel, retired personnel and dependents of such active and retired personnel for participation in any group plans.
- (c) Determine the nature and extent of needs for group life insurance, group annuities, group disability insurance, and group health care service coverages with respect to personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho and retired personnel, the premiums or prepayments for which are payable in whole or in part from funds of the state. "Disability" insurance includes all personal accident, health, hospital, surgical, and medical coverages, and "health care service" includes all services rendered for maintenance of good health and diagnosis, relief, or treatment of any injury, ailment, or bodily condition.

(d) Determine the types, terms, conditions, and amounts of group insurance, group annuities, or group coverage by health care service organizations, as the case may be, required by such needs.

(e) Negotiate and contract for, and have placed or continued in effect all such insurance and coverages as may reasonably be obtainable from insurers and health care service organizations, as the case may be, duly authorized to transact such business in this state. The director may negotiate deductibles to any group plan or coverage. Alternatively, the director may self-insure any insurance or coverage and may contract with any insurance company or third party administrator duly authorized to transact business in this state or administer such plan.

(f) Prepare or otherwise obtain and make available to all personnel affected thereby, printed information concerning all such group plans currently in effect, together with the rules governing eligibility, payment of premium or prepayment where applicable, claims procedures, and other matters designed to facilitate utilization and administration of such plans.

(g) Administer all such group plans on behalf of the insured, including but not limited to:

(i) Enrollment and reporting to the insurer or health care service organization of individuals eligible for coverage and covered under particular policies or contracts, and termination of such enrollment upon termination of eligibility;

(ii) Collection or payment of premiums or prepayments for such coverage, policies and contracts and accounting for the same;

(iii) Establishment of reasonable procedures for handling claims arising under such coverage, policies and contracts, and rendering assistance to claimants, as may be required in the presentation and consideration of claims;

(iv) Effectuation of changes in such coverage, policies and contracts and renewal or termination thereof;

(v) Making and settlement of claims.

(2) The director shall formulate and negotiate a plan or plans of health care service coverage which includes eligible active personnel and their dependents in consultation with the advisory committee.

(3) The director shall formulate and negotiate a plan or plans of health care service coverage which includes eligible retired personnel and dependents. Such plan or plans will be pooled for rating purposes with the plan or plans provided for in subsection (2) of this section.

(a) Beginning July 1, 2009, the state shall pay one hundred fifty-five dollars (\$155) per eligible retired personnel per month toward such health care service coverage, subject to the conditions of subsection (3)(b) of this section. Retired personnel shall be responsible for paying the balance of the monthly premium for any plan of health care service coverage provided pursuant to this section.

(b) Beginning January 1, 2010, retired personnel health care service coverage shall not be available to any retired personnel or dependent who is or becomes eligible for medicare. Dependent spouses of such medicare

eligible retired personnel who are not themselves medicare eligible may remain on health care service coverage until they become eligible for medicare.

(c) Any person who is eligible for health care service coverage as a retired person prior to June 30, 2009, remains eligible for coverage subject to the conditions of subsections (3)(a) and (b) of this section.

(d) No personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, agencies and operations of the government of the state of Idaho, who begin service or employment after June 30, 2009, shall be provided or be eligible for any retired personnel health care service coverage, unless such personnel have credited state service of at least twenty thousand eight hundred (20,800) hours before June 30, 2009, and subsequent to reemployment, election or reappointment on or after July 1, 2009, accumulate an additional six thousand two hundred forty (6,240) continuous hours of credited state service, and who are otherwise eligible for coverage.

(e) Nothing in this subsection prohibits an active employee who retires from state service on or after July 1, 2009, from being eligible for health care service coverage provided that he or she is drawing a state retirement benefit and meets eligibility requirements of the health care service coverage.

(f) The Idaho department of administration shall assist medicare eligible retirees in transitioning to a medicare supplement plan in accordance with procedures established by the advisory committee.

(4) Nothing contained herein and no coverage, policy or contract which provides coverage or benefits for active personnel, dependents of personnel, or retired personnel shall create any vested right or benefit for any such individual in group insurance coverage.

History.

1974, ch. 253, § 2, p. 1656; am. and redesign. 1980, ch. 106, § 10, p. 231; am. 1983, ch. 148, § 1, p. 401; am. 1986, ch. 150, § 1, p. 434; am.

1988, ch. 292, § 1, p. 930; am. 1990, ch. 117, § 1, p. 263; am. 1993, ch. 221, § 8, p. 747; am. 1998, ch. 185, § 1, p. 678; am. 2009, ch. 164, § 2, p. 492.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 164, rewrote the section, revising powers and duties of the director of the department of administration regarding group insurance and revising provisions relating to group insurance coverage for certain retirees.

Effective Dates.

Section 3 of S.L. 2009, ch. 164 declared an emergency. Approved April 14, 2009.

67-5761B. State contribution to state employee health savings accounts. — (1) All state officers or employees may, for themselves and their eligible dependents, create and maintain a health savings account and choose a high deductible health plan in accordance with the provisions of this section.

(2) As used in this section:

- (a) "Employer premium" means the costs to the state of Idaho for a policy of group insurance procured by the department of administration.
- (b) "Health savings account" means an account at a financial institution that is designed to help individuals save for future health care expenses pursuant to 26 U.S.C. section 223.
- (c) "High deductible health plan" means a health plan qualifying for use with a health savings account pursuant to 26 U.S.C. section 223, and offered by the department of administration to eligible state officers and employees.
- (3) State officers or employees who choose a high deductible health plan for themselves and their eligible dependents shall qualify for the deposits provided for in subsection (4) of this section. Such officers or employees shall establish and create a health savings account and provide information concerning such account to their employer.
- (4) For each pay period, the employer shall deposit the difference between the employer premium for a state of Idaho high deductible health plan and the employer premium of the lowest deductible group health plan offered by the department of administration in the health savings account established and created by an officer or employee enrolled in a state of Idaho high deductible health plan. Deposits made pursuant to this subsection shall not exceed the United States internal revenue service's maximum allowable contribution to a health savings account.
- (5) Nothing in this section shall prohibit state officers or employees with a health savings account from contributing to such account of their own accord.
- (6) The department of administration may promulgate rules to implement the provisions of this section.

History.

I.C., § 67-5761B, as added by 2013, ch. 213,
§ 2, p. 502.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2013, ch. 213 provided:
"Legislative Intent. It is the intent of the Legislature to encourage, facilitate and fund health savings accounts for employees of the State of Idaho who are enrolled in a high

deductible health plan. By encouraging state employees to create a health savings account, they will be empowered to make sound, responsible decisions and better manage their own medical care."

67-5767. Director may provide service to school districts, public community colleges, public colleges, public universities or other political subdivisions. — (1) Under terms and procedures mutually agreed upon by contract, the director of the department of administration may render the same services with respect to personnel of any school district, public community college, public college, public university, or other political subdivision of the state of Idaho. The cost of any group insurance, group annuity or health care service coverage so provided and of administration thereof shall be borne by the school district, public community college, public college, public university, or other political subdivision.

(2) Other political subdivision for the purpose of this section means any organization composed of units of government of Idaho or organizations funded only by government or government employee contributions or organizations who discharge governmental responsibilities that would otherwise be performed by government.

History.

1974, ch. 253, § 3, p. 1656; am. 1978, ch. 161, § 1, p. 350; am. and redesi. 1980, ch.

106, § 16, p. 231; am. 1993, ch. 221, § 10, p. 747; am. 2009, ch. 148, § 1, p. 438.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 148, rewrote the section catchline, which formerly read: "Director may provide service to school districts and other political subdivisions"; in subsection (1), twice inserted "public community college, public college, public university" and

the last occurrence of "other"; and, in subsection (2), substituted "Other political subdivision" for "Governmental entity" and deleted the last sentence, which read: "All government entities are deemed to be political subdivisions for the purpose of this act."

67-5779. Definitions. — As used in sections 67-5780, 67-5781 and 67-5782, Idaho Code:

(1) "Geographic information" means data and datasets containing location information including, but not limited to, remotely sensed imagery, global positioning systems files, geospatially referenced computer-aided design files, digital cartographic products, spatially enabled databases, and geospatial datasets locating and describing features and their attributes on, above or under the earth;

(2) "Geographic information systems" or "GIS" is an information system capable of capturing, integrating, storing, editing, analyzing, managing, sharing, and displaying geographic information. A GIS involves computer hardware, software, networks, and applications, as well as the people to operate, develop, administer and use them;

(3) "Metadata" is a description of the quality, currency, attributes, methods and other salient aspects of geographic and tabular information; and

(4) "State agency" means all state agencies or departments, boards, commissions, councils and institutions of higher education but shall not include the elected constitutional officers and their staffs, the legislature and its staffs or the judiciary.

History.

I.C., § 67-5779, as added by 2008, ch. 332, § 2, p. 917.

STATUTORY NOTES

Prior Laws.

Former § 67-5779, which comprised I.C., § 67-5779, as added by 1998, ch. 256, § 60, p.

825, was repealed by S.L. 2000, ch. 230, § 1, effective July 1, 2000.

67-5780. Integrated property records system — Transfer of responsibility. — The department of administration:

- (1) Shall take possession and control of the state's integrated property records system previously created pursuant to section 58-330, Idaho Code;
- (2) Shall manage the state's integrated property records system;
- (3) Shall lead the establishment of a standard format, workflow and technical procedures to permit update of the integrated property records system with geographic and other relevant data and information received from state agencies; and
- (4) Shall lead the planning and deployment of multiagency enterprise use of the integrated property records system.

History.

I.C., § 67-5780, as added by 2008, ch. 332,
§ 2, p. 917.

STATUTORY NOTES**Prior Laws.**

Former § 67-5780, which comprised I.C.,
§ 67-5780, as added by 1998, ch. 256, § 61, p.

825, was repealed by S.L. 2000, ch. 230, § 1,
effective July 1, 2000.

67-5781. Agencies to provide records and data. — (1) Every state agency shall, no later than January 15, 2009, provide records, in an electronic format acceptable to the department of administration, of all interests in any real property owned, used or granted by it including, without limitation, records of ownership, leases, encumbrances, easements, rights-of-way leases or any other interest in real property, and on a regular and continuous basis, update such records and provide any new records to the department of administration. Metadata will accompany all state agency records.

(2) For the purposes of this section, the Idaho transportation department shall provide highway right-of-way records from January 1, 2002, forward, augmented thereafter each time real property owned by the state of Idaho is affected as part of the Idaho transportation department's regular course of business.

(3) For purposes of this section, state agencies shall provide only records and geographic information that are subject to disclosure under chapter 3, title 9, Idaho Code, or that the agency has determined to disclose as a public record.

History.

I.C., § 67-5781, as added by 2008, ch. 332,
§ 2, p. 917.

STATUTORY NOTES**Prior Laws.**

Former § 67-5781, which comprised I.C.,
§ 67-5781, as added by 1998, ch. 256, § 62, p.

825, was repealed by S.L. 2000, ch. 230, § 1,
effective July 1, 2000.

67-5782. Responsibility for quality. — In regard to any obligation on any state agency or other entity to provide records to the department of administration pursuant to section 67-5780 or 67-5781, Idaho Code, the

obligation for quality remains with the originator and does not transfer to the department of administration by virtue of its receipt or by integration or other use of such records.

History.

I.C., § 67-5782, as added by 2008, ch. 332,
§ 2, p. 918.

CHAPTER 58**PROTECTION OF NATURAL RESOURCES****SECTION.**

67-5805. Legislative findings and intent.

67-5806. Declaration of emergency.

SECTION.

67-5807. Governor — Executive orders.

67-5805. Legislative findings and intent. — (1) Section 1, article I, of the constitution of the state of Idaho provides: “All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.” It is the duty and right of the legislature and the governor to protect the state, its citizens and property. Section 36-103(a), Idaho Code, provides: “All wildlife, including all wild animals, wild birds, and fish, within the state of Idaho, is hereby declared to be the property of the state of Idaho.” The state of Idaho therefore has the responsibility to manage the big game animals of the state.

(2) The Idaho legislature finds and declares that the state’s citizens, businesses, hunting, tourism and agricultural industries, private property and wildlife, are immediately and continuously threatened and harmed by the sustained presence and growing population of Canadian gray wolves in the state of Idaho. The Idaho legislature, therefore, finds the population of gray wolves in Idaho, having been introduced into the state in 1995, over the united objection of the Idaho congressional delegation, Idaho legislature, Idaho governor, Idaho counties and numerous Idaho agricultural groups who were gravely concerned with the negative effects this action would impose on Idaho and Idahoans, is now many times exceeding the target number originally set by the federal government and the number set in Idaho’s federally approved 2002 wolf management plan. The U.S. fish and wildlife service (USFWS) has delisted the gray wolf in Idaho in 2008 and 2009 returning management to the state, only to be sued both times by environmental groups forcing the wolf to be relisted as endangered. As a result of all the above, the legislature finds that public safety has been compromised, economic activity has been disrupted and private and public property continue to be imperiled. The uncontrolled proliferation of imported wolves on private land has produced a clear and present danger to humans, their pets and livestock, and has altered and hindered historical uses of private and public land, dramatically inhibiting previously safe activities such as walking, picnicking, biking, berry picking, hunting and fishing. The continued uncontrolled presence of gray wolves represents an unfunded mandate, a federal commandeering of both state and private

citizen resources and a government taking that makes private property unusable for the quiet enjoyment of property owners. An emergency existing therefore, it is the intent of the legislature to regulate the presence of Canadian gray wolves in Idaho in order to safeguard the public, wildlife, economy and private property against additional devastation to Idaho's social culture, economy and natural resources, and to preserve the ability to benefit from private and public property within the state and experience the quiet enjoyment of such property.

History.

I.C., § 67-5805, as added by 2011, ch. 334,
§ 1, p. 976.

STATUTORY NOTES**Compiler's Notes.**

The letters "USFWS" enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2011, ch. 334 declared an emergency. Approved April 19, 2011.

RESEARCH REFERENCES

A.L.R. — Construction and application of state prohibitions of unfunded mandates. 76 A.L.R.6th 543.

67-5806. Declaration of emergency. — A disaster emergency, as defined in section 46-1002(3) and (4), Idaho Code, is in existence as a result of the introduction of Canadian gray wolves, which have caused and continue to threaten vast devastation of Idaho's social culture, economy and natural resources. The geographical extent of this emergency shall include any part of the state of Idaho where gray wolves have been sighted and whose sighting has been documented or otherwise confirmed by the office of species conservation or the department of fish and game.

History.

I.C., § 67-5806, as added by 2011, ch. 334,
§ 2, p. 976.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2011, ch. 334 declared an emergency. Approved April 19, 2011.

67-5807. Governor — Executive orders. — (1) Pursuant to this act, the governor may issue executive orders and proclamations and amend or rescind such orders and proclamations. Executive orders and proclamations have the force and effect of law. A disaster emergency may be declared by executive order or proclamation of the governor if the governor finds any of the following:

- (a) Any Canadian gray wolf within the state is a carrier of a disease harmful to humans, livestock, pets and wild game and that there is a risk of transmission of such disease to humans, livestock, pets or wild game;

(b) The potential of human-wolf conflict exists and that the Canadian gray wolf is frequenting areas inhabited by humans or showing habituated behavior toward humans;

(c) That the potential for livestock-wolf conflict exists and that the Canadian gray wolf is frequenting areas that are largely ranchland with livestock or showing evidence of habituated behavior toward livestock;

(d) The numbers of Canadian gray wolves are such that there is an impact to Idaho big game herds as identified in the wolf management plan of 2002, and that there is evidence that increasing the number of wolves beyond one hundred (100) has had detrimental impacts on big game populations, the economic viability of the Idaho department of fish and game, outfitters and guides, and others who depend on a viable population of big game animals;

(e) The numbers of big game animals have been significantly impacted below that of recent historical numbers and that there has been a measurable diminution in the value of businesses tied to outfitting and other game or hunting based businesses.

(2) The executive order or proclamation shall direct the office of species conservation to initiate emergency proceedings in accordance with section 67-5247, Idaho Code. Any person may challenge an action or proposed action of the office of species conservation by following the appeals process prescribed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(3) The state of disaster emergency shall continue until the governor finds that either gray wolves are delisted in Idaho with full state management restored or the threat has been dealt with to the extent that emergency conditions no longer exist. When either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation. Provided however, that no state of disaster emergency pursuant to the provisions of this act may continue for longer than one (1) year. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued pursuant to this section shall indicate which of the conditions in this section exist, the area or areas threatened and the actions planned to resolve the issue, including contracting with USDA-APHIS wildlife services. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, be promptly filed with the office of species conservation, the department of fish and game, the office of the secretary of state and the office of the sheriff of each county where the state of disaster emergency applies.

History.

I.C., § 67-5807, as added by 2011, ch. 334,
§ 3, p. 976.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the introductory paragraph in subsection (1) refers to S.L. 2011, ch. 334, which is codified as §§ 67-5805 to 67-5807.

Effective Dates.

Section 4 of S.L. 2011, ch. 334 declared an emergency. Approved April 19, 2011.

CHAPTER 59

COMMISSION ON HUMAN RIGHTS

SECTION.

67-5904. Organization of commission — Compensation of members.

67-5905. Administrative support — Appointment of commission staff — Duties of administrator.

SECTION.

67-5907. Complaints — Procedure on complaint.

67-5901. Purpose of chapter.

JUDICIAL DECISIONS

Perceived Disability.

Summary judgment was improper on an employee's disability discrimination claim where a coworker's affidavit was direct evidence that a supervisor regarded the employee as being substantially limited in the major life activity of working, thereby raising an issue of fact as to whether the employer

perceived the employee as disabled due to his insulin dependent diabetes and terminated him based on that perceived disability. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 179 P.3d 1064 (2008).

Cited in: *Stout v. Key Training Corp.*, 144 Idaho 195, 158 P.3d 971 (2007).

67-5902. Definitions.

JUDICIAL DECISIONS

Disability Defined.

Former employee with insulin-dependent diabetes was disabled because his diabetes and the treatment regimen that he had to

follow substantially limited him in the major life activity of eating. *Davenport v. Idaho Dep't of Env'tl. Quality*, 469 F. Supp. 2d 861 (D. Idaho 2006).

67-5904. Organization of commission — Compensation of members. — The commission shall annually select a president and vice president. Members shall each be compensated as provided by section 59-509(h), Idaho Code.

History.

1969, ch. 459, § 4, p. 1277; am. 1974, ch. 22, § 41, p. 592; am. 1975, ch. 176, § 1, p. 481;

am. 1980, ch. 247, § 91, p. 582; am. 1992, ch. 120, § 1, p. 397; am. 2010, ch. 248, § 1, p. 636.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 248, deleted the former last two sentences, which read: "The commission may appoint a staff director

to serve at its pleasure. Other subordinate staff necessary to accomplish the commission's mission shall be subject to the provisions of chapter 53, title 67, Idaho Code."

67-5905. Administrative support — Appointment of commission staff — Duties of administrator. — The director of the department of labor shall provide administrative support to the commission. The director shall appoint an administrator to the commission to serve at the director's pleasure. Any decision by the director regarding the appointment and tenure of the administrator shall be made with the advice and consent of the commission. The administrator shall attend all meetings of the commission, serve as its executive and administrative officer, have charge of its office and records, and, under the general supervision of the commission, be responsible for the administration of this act and the general policies and regulations adopted by the commission. Other subordinate staff necessary to accomplish the commission's mission shall be employees of the department of labor subject to the provisions of chapter 53, title 67, Idaho Code.

History.

1969, ch. 459, § 5, p. 1277; am. 1974, ch. 22, § 42, p. 592; am. 2010, ch. 248, § 2, p. 636.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 248, rewrote the section heading, which formerly read: "Duties of staff director"; added the first three

sentences; in the fourth sentence, substituted "administrator" for "staff director"; and added the last sentence.

67-5907. Complaints — Procedure on complaint. — (1) Any person who believes he or she has been subject to unlawful discrimination, or a member of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination within one (1) year of the alleged unlawful discrimination.

(2) Upon receipt of such a complaint, the commission or its delegated investigator shall endeavor to resolve the matter by informal means prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its delegated investigator shall conduct such investigation as may be necessary to resolve the issues raised by the facts set forth in the complaint.

(3) If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding, and shall notify the complainant and the respondent of its action.

(4) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. No offer or counter offer of conciliation nor the terms of any conciliation agreement may be made public without the written consent of all the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal. If the case is disposed of by such informal means in a manner satisfactory to the commission, the commission shall dismiss the proceeding, and shall notify the complainant and the respondent.

(5) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or

great inconvenience will be caused the victim of such discrimination if relief is not immediately granted, or if conciliation efforts under subsection (4) have not succeeded, the commission may file a civil action seeking appropriate legal and equitable relief.

(6) A complainant may request dismissal of an administrative complaint at any time. Dismissals requested before three hundred sixty-five (365) calendar days from the date of filing of the administrative complaint may be granted at the discretion of the administrator who will attempt to contact all parties who have appeared in the proceeding and consider their interests. After three hundred sixty-five (365) calendar days, if the complaint has not been dismissed pursuant to subsection (3) of this section or the parties have not entered into a settlement or conciliation agreement pursuant to subsection (2) or (4) of this section or other administrative dismissal has not occurred, the commission shall, upon request of the complainant, dismiss the complaint and notify the parties.

History.

I.C., § 67-5907, as added by 1980, ch. 97, § 2, p. 214; am. 1998, ch. 155, § 1, p. 528; am. 2010, ch. 248, § 3, p. 636.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 248, substituted "administrator" for "staff director" in subsection (6).

67-5908. Procedure in district court.

JUDICIAL DECISIONS

ANALYSIS

Attorney fees.
Exhaustion.

Attorney Fees.

Because the Idaho Human Rights Act does not make express allowance for an award of attorney fees, the legislature did not intend that such an award would be available. *Stout v. Key Training Corp.*, 144 Idaho 195, 158 P.3d 971 (2007).

the Idaho human rights commission as a condition precedent to litigation, and a plaintiff's failure to file an IHRC complaint warrants dismissal of those claims. Filing a charge with the EEOC does not satisfy this condition precedent. *Collier v. Turner Indus. Group, L.L.C.*, 797 F. Supp. 2d 1029 (D. Idaho 2011).

Exhaustion.

Idaho requires the filing of a complaint with

67-5909. Acts prohibited.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Construction.
— Disability discrimination.
Disability defined.
Sexual harassment.

Applicability.

Employee resigned, claiming a hostile work environment due to an affair between her supervisor and another employee which resulted in favoritism toward the paramour and her staff. Paramour favoritism is not proscribed activity under this section, and the alleged favoritism was not directed against, nor did it result in, an unfavorable effect upon a protected person or group. *Patterson v. State Dep't of Health & Welfare*, 151 Idaho 310, 256 P.3d 718 (2011).

Construction.**—Disability Discrimination.**

Where an employee was terminated after failing to renew a teaching certificate, her disability discrimination claims failed because she was not a qualified individual with a disability; the employee did not allege that the school board's legal authorization requirement was itself discriminatory, and the school

board was not required to accommodate the employee's disability. *Johnson v. Bd. of Trs.*, 666 F.3d 561 (9th Cir. 2011).

Disability Defined.

Former state employee with insulin-dependent diabetes was disabled because his diabetes and the treatment regimen that he had to follow substantially limited him in the major life activity of eating. *Davenport v. Idaho Dep't of Envtl. Quality*, 469 F. Supp. 2d 861 (2006), modified on other grounds, 2007 U.S. Dist. LEXIS 21603 (D. Idaho 2007).

Sexual Harassment.

Summary judgment was properly awarded to a college in a student's action for discrimination, where the college had promulgated a sexual harassment policy aimed at preventing harassment and had acted swiftly and decisively once it was informed of an instructor's behavior. *Johnson v. N. Idaho College*, 153 Idaho 58, 278 P.3d 928 (2012).

67-5911. Reprisals for opposing unlawful practices.**JUDICIAL DECISIONS****Evidence.**

A claim under this section is commonly referred to as a retaliation cause of action. Employee who complained of paramour favoritism by a supervisor to another employee and

her staff did not demonstrate that the alleged favoritism was unlawful under chapter 59, title 67, Idaho Code. *Patterson v. State Dep't of Health & Welfare*, 151 Idaho 310, 256 P.3d 718 (2011).

RESEARCH REFERENCES

A.L.R. — Individual liability of supervisors, managers, officers or co-employees for

discriminatory actions under state Civil Rights Act. 83 A.L.R.5th 1.

CHAPTER 60**IDAHO WOMEN'S COMMISSION****STATUTORY NOTES****Compiler's Notes.**

This chapter heading is set out to reflect the amendment by S.L. 2007, ch. 90, § 31.

CHAPTER 62**IDAHO HOUSING AND FINANCE ASSOCIATION****SECTION.**

67-6201. Purpose.

67-6205. Definitions.

67-6206. Powers of association.

67-6207A. Additional powers.

SECTION.

67-6210. Power to issue bonds.

67-6223. Borrowing power — Financial assistance — Cooperation with state and federal government.

67-6201. Purpose. — It is hereby declared:

(a) That within the state there is a shortage of safe or sanitary dwelling accommodations available which persons of low incomes can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities.

(b) That private enterprise has not been able to provide, without assistance, an adequate supply of safe and sanitary dwellings at prices or rents which persons and families of low income can afford, or to achieve rehabilitation of much of the present low-income housing. It is imperative that the supply of housing for persons and families of low income be increased and that coordination and cooperation among private enterprise, state and local government be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

(c) That the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist, and the providing of safe and sanitary dwelling accommodations for persons of low incomes (which dwelling accommodations need not be solely for persons of low incomes in order to avoid concentrations of such persons in specific localities), are public uses, and uses and purposes for which public money may be spent and private property acquired, and are governmental functions.

(d) It is also declared and the legislature hereby finds that charitable, educational, human service, cultural and other purposes pursued by non-profit corporations are important public functions and public purposes that should be encouraged and that financing of nonprofit facilities for these purposes should be encouraged, without using state funds or lending the credit of the state, through the issuance of nonrecourse revenue bonds and the lending of the proceeds thereof to nonprofit corporations to promote their purposes.

(e) It is further declared that in this state:

(1) There exists an inadequate supply of funds at interest rates sufficiently low to enable persons engaged in agriculture in this state, particularly beginning farmers and ranchers, to pursue agricultural operations at present levels;

(2) That such inability to pursue agricultural operations reduces the supply of agricultural commodities available to fulfill the needs of the citizens of this state;

(3) That such inability to continue operations decreases available employment in the agricultural sector of the state and results in unemployment and its attendant problems;

(4) That such conditions prevent the acquisition of an adequate capital stock of farm and ranch equipment and machinery, therefore impairing the productivity of agricultural land;

(5) That such conditions are conducive to consolidation of acreage of agricultural land with fewer individuals living and farming and ranching on the traditional family farm and ranch;

(6) That these conditions result in a loss in population, unemployment and movement of persons from rural to urban areas accompanied by added costs to communities for creation of new public facilities and services;

(7) That there have been recurrent shortages of funds from private market sources at reasonable rates of interest;

(8) That these shortages have made the sale and purchase of agricultural land to beginning farmers and ranchers a virtual impossibility in many parts of the state;

(9) That the ordinary operations of private enterprise have not in the past corrected these conditions; and

(10) That a stable supply of adequate funds for agricultural financing is required to encourage beginning farmers and ranchers in an orderly and sustained manner and to reduce the problems described herein.

(f) It is further declared that in this state there is an urgent need to promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry and commerce that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry and commerce to the state; protect and enhance the quality of natural resources and the environment; and promote the production and conservation of energy; and that financing of economic development projects in partnership with private financial institutions and state or local economic development entities for these purposes should be encouraged, without using state funds or lending the credit of the state through the issuance of nonrecourse revenue bonds and the lending of the proceeds thereof for such purposes.

(g) It is hereby further declared that:

(1) The growth of the economy of this state has prompted new and ever-increasing uses of public highways, roads, and other transportation infrastructure, and the existing transportation infrastructure of this state cannot adequately accommodate such greatly increased uses;

(2) One of the major concerns of the citizens of this state is the ability of the state to address the long-term transportation infrastructure needs of this state that are critical to the continued growth of the state's economy and the maintenance of citizens' quality of life;

(3) Utilizing bonds or notes to finance projects for transportation infrastructure results in significant cost savings to the state, since such transportation projects can be completed at present day costs and at an accelerated pace, but such bonds and notes need to be issued promptly in order to realize these cost savings; and

(4) It is reasonable and necessary to utilize such bonds or notes for the financing of transportation projects.

(h) It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended or

granted and that such activities are governmental functions and serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

History.

1972, ch. 324, § 1, p. 789; am. 1974, ch. 104, § 1, p. 1210; am. 1976, ch. 283, § 1, p. 968;

am. 1997, ch. 191, § 1, p. 531; am. 2000, ch. 364, § 1, p. 1203; am. 2005, ch. 378, § 7, p. 1217; am. 2007, ch. 152, § 1, p. 463.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, added subsection (f) and redesignated the remaining subsections accordingly.

Effective Dates.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

67-6205. Definitions. — The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) “Association” or “housing association” shall mean the Idaho housing and finance association created by section 67-6202, Idaho Code.

(b) “Housing project” shall mean any work or undertaking:

(1) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or

(2) To construct, sell, lease, finance, improve, operate or otherwise provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property which are necessary, convenient or desirable appurtenances, such as, but not limited to, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, and welfare or other purposes; or

(3) To accomplish a combination of the foregoing. The term “housing project” also may be applied to the planning of the buildings and improvements, for either single or multi-family housing, the acquisition of property, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration and repair of the buildings and improvements and all other work in connection therewith.

(c) “Governing body” shall mean the city council, board of commissioners, board of trustees or other body having charge of the locality in which the association desires to undertake a housing project.

(d) “Federal government” shall include the United States of America, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) “City” shall mean any city in the state of Idaho, including each city having a special charter.

(f) “County” or “counties” shall include all counties in the state of Idaho as designated in chapter 1, title 31, Idaho Code.

(g) "Clerk" shall mean the clerk of the city or county as the case may be or the officer charged with the duties customarily imposed on such clerk.

(h) "Area of operation" shall mean the state of Idaho.

(i) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(j) "Person of low income" means persons deemed by the association, including those defined as "elderly" in the United States Housing Act of 1937[,] 42 U.S.C., section 1437 et seq., as amended, to require assistance available under this act on account of insufficient personal or family income, to pay the rents or carrying charges required by the unaided operation of private enterprise in providing an adequate supply of decent, safe and sanitary housing and in making such determination the association shall take into consideration, without limitation, such factors as:

(1) The amount of the total income of such persons available for housing needs;

(2) The size of the family;

(3) The cost and condition of housing facilities available;

(4) Standards established for various federal programs determining eligibility based on income of such persons; and

(5) The ability of such persons to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing.

(k) "Bonds," "notes" or "bond anticipation notes," and "obligations" shall mean any bonds, notes, interim certificates, debentures or other evidences of financial indebtedness issued by the association pursuant to this chapter.

(l) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(m) "Housing authority" or "authority" means a housing authority established pursuant to the "housing authorities and cooperation law" constituting chapter 19, title 50, Idaho Code.

(n) "Rent" shall mean the periodic payment made by a person of low income in a housing project whether such money is being used as rent, or for the development of equity by such person.

(o) "Interim financing" means a short-term construction loan for planning and/or development of residential housing for persons of low income and other persons which loan shall run until financing can be assumed through other federal, state or private financing.

(p) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, and corporations, cooperatives, and condominiums, approved by the association as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing project, subject to the regulatory powers of the association and other terms

and conditions set forth in this chapter. A "housing sponsor" shall be either a "limited profit" sponsor or a "nonprofit" sponsor.

(q) "Mortgage lender" means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan association, life insurance company, and any other financial institution authorized to transact business in the state.

(r) "Mortgage loan" means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a lien on property in the state except in the case of loans insured by the federal housing administration or the association and which are made for the rehabilitation or improvement of existing dwellings; in such case the loans need not be secured by an instrument constituting a lien on property in the state.

(s) "Mixed income housing project" means a housing project which contains dwellings occupied or to be occupied by persons of low income constituting at least twenty percent (20%) of such occupancy.

(t) "Facilities" means land, rights in land, buildings, structures, equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and portions of any of the foregoing and similar ancillary facilities.

(u) "Nonprofit corporation" means a nonprofit corporation organized and operating in accordance with Idaho law or a nonprofit corporation organized and operating in accordance with comparable laws within another state or territory of the United States.

(v) "Nonprofit facilities" means facilities owned or used by a nonprofit corporation for a nonprofit purpose of the corporation; provided that facilities for health facilities which may be funded pursuant to chapter 14, title 39, Idaho Code, shall not be included in this definition, except for such health facilities as may be specifically approved by the Idaho health facilities authority. Facilities owned or used, consistent with its nonprofit purpose, by a nonprofit corporation recognized by a state institution of higher education as its college or university foundation shall be considered nonprofit facilities under this chapter.

(w) "Project costs of a nonprofit facility" means costs of:

- (1) Acquisition, construction and improvement of any facilities included in a nonprofit facility;
- (2) Architectural, engineering, consulting, accounting and legal costs related directly to the development, financing and construction of a nonprofit facility, including costs of studies assessing the feasibility of a nonprofit facility;
- (3) Finance costs, including discounts, if any, the costs of issuing bonds, and costs incurred in carrying out any provisions thereof;
- (4) Interest during construction and during the six (6) months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;
- (5) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(6) Other costs incidental to any of the costs listed in this section.

(x) "Agricultural facility or facilities" means land, any building or other improvement thereon or thereto, to be owned by a beginning farmer or rancher and any personal properties deemed necessary or suitable for use, whether or not now in existence in farming or ranching, the production of agricultural commodities, including, without limitation, the products of aquaculture, hydroponics and silviculture, or the treating, processing or storing of such agricultural commodities when such activities are customarily engaged in by beginning farmers or ranchers as a part of farming or ranching.

(y) "Municipality" means any county, municipal corporation, highway district, taxing district or other political subdivision of this state.

(z) "State" means the state of Idaho.

(aa) "State body" means any department, board, commission or agency of the state of Idaho.

(bb) "Transportation board" means the Idaho transportation board and its successors.

(cc) "Transportation department" means the Idaho transportation department and its successors.

(dd) "Transportation project" means any transportation infrastructure project including, without limitation, a road, street, parkway, right-of-way, bridge, railroad crossing, drainage structure, sign, guardrail, structure, interstate, surface, resurface, shoulder, roadside, or any other work, and any planning development, management and construction related thereto, all as approved or recommended to the association by the transportation board.

(ee) "Economic development project or projects" means any commercial or industrial project including, without limitation, any manufacturing, processing, production, assembly, warehousing, solid waste disposal, recreation, office, research and development, energy or other business project owned by one (1) or more persons or other legal entities, any costs relating thereto including, without limitation, costs for buildings, land, equipment, furnishings, interest, costs of operation, financing, architectural, engineering and other professional costs and other related costs, as well as any working capital costs or expenses for such businesses.

(ff) "Department of labor" means the Idaho department of labor and its successors.

(gg) "Department of labor project" means any project to assist the department of labor in providing or financing unemployment compensation benefits all as approved or recommended to the association by the director of the department of labor pursuant to section 72-1346B, Idaho Code.

History.

1972, ch. 324, § 5, p. 789; am. 1974, ch. 104, § 5, p. 1840; am. 1976, ch. 283, § 2, p. 968; am. 1977, ch. 326, § 1, p. 914; am. 1996, ch. 253, § 4, p. 802; am. 1997, ch. 191, § 2, p.

531; am. 2000, ch. 364, § 2, p. 1203; am. 2000, ch. 365, § 1, p. 1212; am. 2005, ch. 378, § 8, p. 1217; am. 2007, ch. 152, § 2, p. 463; am. 2011, ch. 111, § 1, p. 292.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, corrected the federal reference in subsection (j); and added subsection (ee).

The 2011 amendment, by ch. 111, in subsection (j), inserted "42 U.S.C., section 1437 et seq." and added subsections (ff) and (gg).

Compiler's Notes.

The bracketed insertion in subsection (j)

was added by the compiler to supply punctuation omitted by the 2011 amendment.

Effective Dates.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

67-6206. Powers of association. — The housing and finance association is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the association; and to make and from time to time amend and repeal bylaws, rules, not inconsistent with this chapter, to carry into effect the powers and purposes of the association.

(b) To conduct its operations within any or all of the counties of the state.

(c) To cooperate with housing authorities throughout Idaho in the development of housing projects.

(d) To assign priorities for action and revise or modify said priorities from time to time.

(e) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the association under this chapter, including contracts with any housing sponsor, mortgage lender, person, firm, corporation, governmental agency, or other entity; and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project and to designate mortgage lenders to act for and in behalf of the association, with respect to originating or servicing and processing mortgage loans of the association, and to pay the reasonable value of service rendered to the association by such mortgage lenders pursuant to contracts with mortgage lenders.

(f) To lease, sell, construct, finance, reconstruct, restore, rehabilitate, operate or rent any housing projects, nonprofit facilities or any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project or nonprofit facilities and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor.

(g) To own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein.

(h) To acquire any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein.

(i) To insure or provide for the insurance of any real or personal property or operation of the association against any risks or hazards, and to procure or agree to the procurement of insurance or guarantees from the federal government or other source for the payment or purchase of any bonds or parts thereof issued by the association, including the power to pay for any such insurance or guarantees.

(j) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which a bank, as defined in the "bank act," title 26, Idaho Code, may legally invest funds including without limitation, to agree to purchase the obligations of any federal, state or local government upon such conditions as the association may determine to be prudent and in its best interest.

(k) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(l) To participate in cooperative ventures with any agencies, organizations and individuals in order to undertake the provision of housing for persons of low income, to undertake the provision of nonprofit facilities, economic development projects or agricultural facilities.

(m) To provide research and technical assistance to eligible agencies, organizations and individuals eligible to develop low-cost housing and to research new low-cost housing development and construction methods.

(n) To make and undertake commitments to make or participate in the making of mortgage loans to persons of low income and to housing sponsors, including without limitation federally insured mortgage loans, and to make temporary loans and advances in anticipation of permanent loans to housing sponsors; said mortgage loans to housing sponsors shall be made to finance the construction, improvement, or rehabilitation of housing projects for persons of low income, and/or mixed income housing projects upon the terms and conditions set forth in this chapter; provided however, that such loans shall be made only upon the determination by the association that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

(o) To purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders which loans have been made for the construction, improvement, or rehabilitation of housing projects for persons of low income and/or mixed income housing projects or loans which have been made to persons of low income for residential housing, upon terms set forth in this chapter; provided however, that any

such purchase shall be made only upon the determination by the association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions. Also, to purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders whether or not said loans were made to persons of low income, upon terms set forth in this chapter; provided, however, that the proceeds from such purchase or the equivalent thereof shall be reinvested in obligations of the association, in mortgage loans to persons of low income or in mortgage loans for housing projects for persons of low income and/or mixed income housing projects, and provided that any such purchase shall be made only upon the determination by the association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions.

(p) To provide interim financing for housing projects including mixed income housing projects approved by the association, provided that the association has determined that such financing is not otherwise available from mortgage lenders upon reasonably equivalent terms and conditions.

(q) To prescribe rules and policies in connection with the performance of its functions and duties.

(r) To do all other things deemed necessary and desirable to accomplish the objectives of this chapter.

(s) To borrow money and issue bonds and notes or other obligations, to invest the proceeds thereof in any lawful manner and to fund or refund the same, and to provide for the rights of the holders of its obligations as provided in this chapter and in connection therewith, to waive, by resolution or other document of the association, the exemption from federal income taxation of interest on any of the association's obligations under existing or future federal law and to establish, maintain and preserve the association's general obligation rating and any rating on its bonds, notes or other obligations.

(t) To receive and accept aid or contributions from any source.

(u) To employ architects, engineers, attorneys, accountants, housing construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation.

(v) To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing projects upon such terms and conditions as the association may prescribe.

(w) To fix and revise from time to time and charge and collect fees and charges in connection with loans made or other services provided by the association pursuant to this chapter, and to make and publish rules respecting the making and purchase of mortgage loans.

(x) To organize a nonprofit corporation to assist the association in providing for housing projects.

(y) To enter upon and inspect any housing project, including housing projects undertaken by housing sponsors, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabili-

tation, operation, management and maintenance, and to examine all books and records with respect to capitalization, income and other matters relating thereto.

(z) To order such alterations, changes or repairs as may be necessary to protect the security of its investment in a housing project or the health, safety, and welfare of the occupants thereof.

(aa) To make or purchase secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project costs of any nonprofit facility, economic development project or agricultural facility, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for the project costs of a nonprofit facility, economic development project or agricultural facility; provided that private financial institutions shall be involved in providing such financing for economic development projects, and further, that the association will work with private financial institutions as the primary or preferred credit enhancement providers if credit enhancement is needed for such financings, and to charge and collect interest on the loans for the loan payments upon such terms and conditions, including without limitation bond rating and issuance conditions, as the board of commissioners considers advisable which are not in conflict with this chapter.

(bb) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of nonprofit facilities, economic development projects or agricultural facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the association, to secure any loan made by the association and to pledge the revenues and receipts therefrom.

(cc) To issue bonds for the purpose of financing all or part of the project cost on any nonprofit facility, economic development project or agricultural facility and to secure the payment of the bonds as provided in this chapter.

(dd) To purchase or sell by installment contract or otherwise, and convey all or any part of any nonprofit facility, economic development project or agricultural facility for such purchase price and upon such terms and conditions as this board of commissioners considers advisable which are not in conflict with this chapter.

(ee) To lease all or any part of any nonprofit facility, economic development project or agricultural facility for such rentals and upon such terms and conditions, including options to purchase, as the board of commissioners considers advisable and not in conflict with this chapter.

(ff) To construct and maintain one (1) or more nonprofit facilities, economic development projects or agricultural facilities, provided that the association shall not operate any nonprofit facility, economic development project or agricultural facility as a business other than as lessor, seller or lender. The purchase, holding and enforcing of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of a nonprofit facility, economic development project or agricultural facility as a business.

(gg) To act as the designated housing resource clearinghouse in the state for matters relating to affordable housing.

(hh) To coordinate the development and maintenance of a housing policy for the state.

(ii) To enter into agreements or other transactions with and accept grants, reimbursements or other payments and the cooperation of the United States or any agency thereof or of the state of Idaho or any agency thereof or municipality of the state in furtherance of the purposes of this act, including, but not limited to, the development, maintenance, operation and financing of any transportation project or the financing of any department of labor project and to do any and all things necessary in order to avail itself of such aid and cooperation.

(jj) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided to finance transportation projects approved and recommended by the transportation board.

(kk) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided to finance department of labor projects approved and recommended by the director of the department of labor pursuant to section 72-1346B, Idaho Code.

History.

1972, ch. 324, § 6, p. 789; am. 1974, ch. 104, § 6, p. 1210; am. 1976, ch. 283, § 3, p. 968; am. 1977, ch. 326, § 2, p. 914; am. 1989, ch. 423, § 3, p. 1034; am. 1996, ch. 253, § 5, p.

802; am. 1997, ch. 191, § 3, p. 531; am. 1998, ch. 374, § 1, p. 1160; am. 2000, ch. 364, § 3, p. 1203; am. 2005, ch. 378, § 9, p. 1217; am. 2007, ch. 152, § 3, p. 463; am. 2011, ch. 111, § 2, p. 292.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, throughout the section, substituted “this chapter” for “this act”; in subsection (l) and throughout subsections (aa) through (ff), inserted “economic development project”; and added the proviso near the middle of subsection (aa).

The 2011 amendment, by ch. 111, in subsection (ii), inserted “or the financing of any

department of labor project” and added subsection (kk).

Effective Dates.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

67-6207A. Additional powers. — In addition to all other powers, the association also shall have the following specific powers:

(a) To make and publish rules respecting making mortgage loans pursuant to this act, the regulations of borrowers, housing sponsors, mortgage lenders, and the construction of ancillary commercial facilities.

(b) To make rules respecting the qualifications for admission to housing projects pursuant to this chapter.

(c) To invest in, purchase, sell, or to make commitments to purchase, and take assignments from lenders, of notes and mortgages or other obligations evidencing loans for housing projects, loans for nonprofit facilities, loans for economic development projects or loans for agricultural facilities, at public or private sale, with or without public bidding.

(d) To make loans to mortgage lenders under terms and conditions

requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans for housing projects.

(e) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions for housing projects.

(f) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interest of the association therein.

History.

I.C., § 67-6207A, as added by 1974, ch. 104, § 8, p. 1210; am. 1996, ch. 253, § 7, p. 802;

am. 1997, ch. 191, § 4, p. 531; am. 2000, ch. 364, § 4, p. 1203; am. 2007, ch. 152, § 4, p. 463.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, in subsection (b), substituted “this chapter” for “this act”; and in subsection (c), inserted “loans for economic development projects.”

Effective Dates.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

67-6210. Power to issue bonds. — The association shall have power and is hereby authorized to issue, from time to time, its negotiable notes and bonds in conformity with the applicable provisions of the uniform commercial code in such principal amount as the association shall determine to be necessary for sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the association, establishment of reserves to secure such notes and bonds, and all other expenditures of the association incidental and necessary or convenient to carry out its corporate purposes and powers; provided, however, that the association shall provide in its resolution authorizing such bonds that all revenues received by the association as a result of the issuance of such bonds shall be pledged first to the payment of principal and interest on such bonds.

(a) The association shall have the power, from time to time, to issue:

- (1) notes to renew notes and
- (2) bonds to pay notes, including the interest thereon, and
- (3) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

The refunding bonds may be:

- (1) exchanged for the bonds to be refunded or
- (2) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(b) Except as may otherwise be expressly provided by the association, every issue of its notes and bonds shall be payable exclusively from the revenues or income of the association, including grants and contributions

from the United States of America, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(c) The notes and bonds shall be authorized by resolution or resolutions of the association, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the association may be sold by the association, at public or private sale, at such price or prices as the association shall determine.

(d) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

- (1) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;
- (2) pledging all or any part of the assets of the association including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;
- (3) the use and disposition of the gross income from mortgages owned by the association and payment of principal of mortgages owned by the association;
- (4) the setting aside of reserves or sinking funds and the regulation and disposition thereof;
- (5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;
- (6) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;
- (7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;
- (8) limitations on the amount of moneys to be expended by the association for operating expenses of the association;
- (9) vesting in a trustee or trustees such property, rights, powers and duties in trust as the association may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act; and limiting or abrogating the right of the bondholders to appoint a trustee under this act, or limiting the rights, powers and duties of such trustee;
- (10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the association to the holders of the notes

or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this act;

(11) pledging all or any part of funds allocated to the association under Idaho law or other revenues or the proceeds of notes or bonds to secure the payment of notes or bonds issued to finance transportation projects, subject to such agreements with noteholders or bondholders as may then exist;

(12) setting forth the provisions for any contracts relating to its bonds or notes, including, without limitation, any investment or interest rate contracts, or any contract providing for a credit enhancement, including, but not limited to, letters of credit, bond insurance and surety bonds provided by private financial institutions;

(13) setting forth the provisions for representations or certifications to be made by an officer of the association with respect to funds to be allocated to the association for transportation projects and provisions for the disbursements of the proceeds of the bonds or notes for payment of the costs of a transportation project, costs of issuance and other related costs;

(14) pledging all or any part of funds allocated to the association pursuant to section 72-1346B, Idaho Code, or the proceeds of notes or bonds to secure the payment of notes or bonds issued to finance a department of labor project, subject to such agreements with noteholders or bondholders as may then exist;

(15) setting forth the provisions for representations or certifications to be made by an officer of the association with respect to funds to be allocated to the association for a department of labor project and provisions for the disbursements of the proceeds of the bonds or notes for payment of the costs of a department of labor project, costs of issuance and other related costs;

(16) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(e) Any pledge made by the association shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the association shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the association, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(f) Neither the commissioners of the association nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(g) The association, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the association, which shall thereupon be canceled, at a price not exceeding:

- (1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or
- (2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(h) In the discretion of the association, the bonds may be secured by a trust indenture by and between the association and a corporate trustee, which may be any trust company or bank having the power of a trust company in the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the association in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The association may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the association. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(i) Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

(j) In case any of the commissioners or officers of the association whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

(k) The association shall not issue any bonds or notes to finance transportation projects unless:

- (1) the Idaho transportation board has approved and recommended the transportation projects for financing through the association;
- (2) the Idaho transportation board has certified to the association that sufficient funds are available to make the payments required for the bonds or notes to be issued to finance the transportation projects and that the annual, total cumulative debt service and bond-related expenses on federally-funded highway project financing do not exceed the limits specified in section 40-315(3), Idaho Code; and
- (3) the association and the Idaho transportation board have entered into an agreement for the association to provide financing of the transportation projects.

(l) The association shall not issue any bonds or notes to finance a department of labor project unless:

- (1) the director of the department of labor has approved and recom-

mended the department of labor project for financing through the association pursuant to section 72-1346B, Idaho Code;

(2) the director of the department of labor has certified to the association that sufficient funds are available to make the payments required for the bonds or notes to be issued to finance the department of labor project; and

(3) the association and the director of the department of labor have entered into an agreement for the association to provide financing of the department of labor project.

History.

1972, ch. 324, § 10, p. 789; am. 1974, ch. 104, § 14, p. 1210; am. 1978, ch. 288, § 1, p.

700; am. 1996, ch. 253, § 13, p. 802; am. 2005, ch. 378, § 10, p. 1217; am. 2011, ch. 111, § 3, p. 292.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 111, added paragraphs (d)(14) and (d)(15), and redesignated former paragraph (d)(14) as paragraph (d)(16); and added subsection (l).

Effective Dates.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

67-6223. Borrowing power — Financial assistance — Cooperation with state and federal government. — In addition to the powers conferred upon the association by other provisions of this chapter, the association is empowered to administer any other state, private or federal assistance program including without limitation all tax credit programs, guaranty, loan or investment funds and block grants and to borrow money or accept contributions, grants or other financial assistance or investment from private sources or from the state or federal government for or in aid of any housing project, nonprofit facility, economic development project or agricultural facility within its area of operation, to take over or lease or manage any housing project, nonprofit facility, economic development project or agricultural facility or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize the association to do any and all things necessary or desirable to secure the financial aid or cooperation of the state or federal government in the undertaking, construction, maintenance or operation of any housing project, nonprofit facility, economic development project or agricultural facility by the association. The association is specifically authorized to work with the Idaho department of agriculture in connection with any loan for an agricultural facility and the Idaho department of agriculture shall assist in the provisions of such loans.

History.

1972, ch. 324, § 23, p. 789; am. 1989, ch. 423, § 10, p. 1034; am. 1996, ch. 253, § 27, p.

802; am. 1997, ch. 191, § 5, p. 531; am. 2000, ch. 364, § 5, p. 1203; am. 2007, ch. 152, § 5, p. 463.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, throughout the section, inserted “economic development project”; and in the first sentence, substituted “this chapter” for “this act,” and inserted “private,” “guaranty, loan or invest-

ment funds,” “or investment,” and “private sources or from.”

Effective Dates.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

CHAPTER 65

LOCAL LAND USE PLANNING

SECTION.

67-6502. Purpose.

67-6508. Planning duties.

67-6509. Recommendation and adoption, amendment, and repeal of the plan.

67-6509A. Siting of manufactured homes in residential areas — Plan to be amended.

67-6511. Zoning ordinance.

67-6512. Special use permits, conditions, and procedures.

67-6519. Application granting process.

67-6520. Hearing examiners.

67-6521. Actions by affected persons.

SECTION.

67-6522. Combining of permits — Permits to assessor.

67-6529C. Definitions.

67-6529E. Process for county request — Contents of the request.

67-6529H. Site suitability determination — Application fees.

67-6530. Declaration of purpose.

67-6531. Single family dwelling.

67-6532. Licensure, standards and restrictions.

67-6535. Approval or denial of any application to be based upon express standards and to be in writing.

67-6501. Short title.

JUDICIAL DECISIONS

Agency.

A county board of commissioners does not fall within the definition of an “agency” for purposes of applying the Idaho administra-

tive procedure act. *Burns Holdings, LLC v. Madison County Bd.*, 147 Idaho 660, 214 P.3d 646 (2009).

67-6502. Purpose. — The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fibre and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

History.

I.C., § 67-6502, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 1, p. 830; am.

1994, ch. 245, § 1, p. 764; am. 1999, ch. 396, § 2, p. 1099; am. 2011, ch. 89, § 1, p. 192.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 89, in subsection (e), inserted “and land uses” and “as well

as the economic benefits they provide to the community.”

JUDICIAL DECISIONS

Conditional Rezone.

Plaintiffs’ argued that the board of county commissioner’s approval of a conditional rezoning frustrated the purposes listed under subsections (f) and (g); however plaintiffs did not provide support to show how the rezoning discouraged urban and urban-type development within incorporated cities, or how it failed to promote the avoidance of undue

concentration of population and overcrowding of land, and, thus, failed to show how the board erred under the terms of IC § 67-5279. *Taylor v. Canyon County Bd. of Comm’rs*, 147 Idaho 424, 210 P.3d 532 (2009).

Cited in: *Ciszek v. Kootenai County Bd. of Comm’rs*, 151 Idaho 123, 254 P.3d 24 (2011).

67-6504. Planning and zoning commission — Creation — Membership — Organization — Rules — Records — Expenditures — Staff.

JUDICIAL DECISIONS

ANALYSIS

Board’s authority.

Review.

Review of commission decision.

Board’s Authority.

Boards of county commissioners are vested with the exclusive, non-delegable, authority to finally approve or deny subdivision applications, and, thus, may make decisions counter to the initial recommendations of the planning and zoning commissioners. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Review.

Opinions rendered by staff members on subdivision applications may not effectively bind a board of county commissioners, even if

money is expended in reliance on those opinions, as the board has the sole, statutory authority to approve or deny a subdivision application under this section. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Review of Commission Decision.

Upholding a city council’s denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission’s prior approval, the appellate court held that the council retained the right to review decisions of the

commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Cited in: *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

67-6508. Planning duties. — It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) **Property Rights** — An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.

(b) **Population** — A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(c) **School Facilities and Transportation** — An analysis of public school capacity and transportation considerations associated with future development.

(d) **Economic Development** — An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(e) **Land Use** — An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(f) **Natural Resources** — An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.

(g) **Hazardous Areas** — An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(h) **Public Services, Facilities, and Utilities** — An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(i) **Transportation** — An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, future corridors, viaducts and grade separations. The component may also include port, harbor, aviation, and other related transportation facilities.

(j) **Recreation** — An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(k) **Special Areas or Sites** — An analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(l) **Housing** — An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types and to address the needs of the community.

(m) **Community Design** — An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(n) **Agriculture** — An analysis of the agricultural base of the area including agricultural lands, farming activities, farming-related businesses and the role of agriculture and agricultural uses in the community.

(o) **Implementation** — An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

(p) **National Interest Electric Transmission Corridors** — After notification by the public utilities commission concerning the likelihood of a federally designated national interest electric transmission corridor, prepare an analysis showing the existing location and possible routing of high voltage transmission lines, including national interest electric transmission corridors based upon the United States department of energy's most recent national electric transmission congestion study pursuant to sections 368 and 1221 of the energy policy act of 2005. "High-voltage transmission lines" means lines with a capacity of one hundred fifteen thousand (115,000) volts or more supported by structures of forty (40) feet or more in height.

Nothing herein shall preclude the consideration of additional planning components or subject matter.

History.

I.C., § 67-6508, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 2, p. 830; am.

1994, ch. 212, § 1, p. 668; am. 1994, ch. 245, § 2, p. 764; am. 1995, ch. 181, § 4, p. 664; am. 1995, ch. 305, § 1, p. 1054; am. 1996, ch. 201,

§ 1, p. 622; am. 2007, ch. 186, § 2, p. 535; am. 2011, ch. 89, § 2, p. 192.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 186, added subsection (o).

The 2011 amendment, by ch. 89, inserted "compatibility of land uses" in the third sentence of the introductory paragraph; added subsection (n); and redesignated former subsections (n) and (o) as present subsections (o) and (p), respectively.

Federal References.

Sections 368 and 1221 of the energy policy act of 2005, referred to in subsection (p), are codified as 42 U.S.C.S. § 15926 and 16 U.S.C.S. § 824p, respectively.

Compiler's Notes.

Section 3 of S.L. 2007, ch. 186 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

JUDICIAL DECISIONS

Comprehensive Plan.

County planning and zoning commission's decision to approve a landowner's conditional use permit using the comprehensive plan as a guide was not arbitrary or capricious, because the commission extensively reviewed the comprehensive plan, considered both the positive and negative aspects of the proposal, and determined that the proposed use was harmonious and in accordance with the comprehensive plan. *Krempasky v. Nez Perce County Planning & Zoning* (In re Approval of a Conditional Use Permit #CUP-2008-3), 150 Idaho 231, 245 P.3d 983 (2010).

While requirements of applicable ordinances are binding on a body rendering a

zoning or permit decision, a comprehensive plan is not. A comprehensive plan reflects the desirable goals and objectives, or desirable future situations, of the use of land. A comprehensive plan does not operate as legally controlling zoning law, but rather serves to guide and advise the governmental agencies responsible for making zoning decisions. *Krempasky v. Nez Perce County Planning & Zoning* (In re Approval of a Conditional Use Permit #CUP-2008-3), 150 Idaho 231, 245 P.3d 983 (2010).

Cited in: *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

67-6509. Recommendation and adoption, amendment, and repeal of the plan. — (a) The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school districts, at least fifteen (15) days prior to the public hearing scheduled by the commission. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan which was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the governing board will not conduct a subsequent public

hearing concerning the proposed amendment. If the governing board will conduct a subsequent public hearing, notice of the planning and zoning commission recommendation shall be included in the notice of public hearing provided by the governing board. A record of the hearings, findings made, and actions taken by the commission shall be maintained by the city or county.

(b) The governing board, as provided by local ordinance, prior to adoption, amendment, or repeal of the plan, may conduct at least one (1) public hearing, in addition to the public hearing(s) conducted by the commission, using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission. Following consideration by the governing board, if the governing board makes a material change in the recommendation or alternative options contained in the recommendation by the commission concerning adoption, amendment or repeal of a plan, further notice and hearing shall be provided before the governing board adopts, amends or repeals the plan.

(c) No plan shall be effective unless adopted by resolution by the governing board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk or county clerk.

(d) Any person may petition the commission or, in absence of a commission, the governing board, for a plan amendment at any time, unless the governing board has established by resolution a minimum interval between consideration of requests to amend, which interval shall not exceed six (6) months. The commission may recommend amendments to the comprehensive plan and to other ordinances authorized by this chapter to the governing board at any time.

History.

I.C., § 67-6509, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 3, p. 830; am.

1999, ch. 396, § 5, p. 1099; am. 2010, ch. 253, § 1, p. 643.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 253, in subsection (d), in the first sentence, added “unless the governing board has established by resolution a minimum interval between consideration of requests to amend, which interval shall not exceed”, deleted the former sec-

ond sentence, which read: “The commission may recommend amendments to the land use map component of the comprehensive plan to the governing board not more frequently than once every six months”, and in the last sentence, deleted “the text of” preceding “the comprehensive plan.”

JUDICIAL DECISIONS

Procedure.

Board of county commissioners acted within its authority under §§ 67-6511 and 67-6535(3) and Idaho Const., Art. XII, § 2 and

this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient op-

portunity to express their views. *Ciszek v. Kootenai County Bd. of Comm'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Cited in: *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

67-6509A. Siting of manufactured homes in residential areas — Plan to be amended. — (1) By resolution or ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses, except for lands falling within an area defined as a historic district under section 67-4607, Idaho Code, to allow for siting of manufactured homes as defined in section 39-4105, Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade, except when placed on a basement foundation;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport constructed of like materials if zoning ordinances would require a newly constructed nonmanufactured home to have a garage or carport;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

History.

I.C., § 67-6509A, as added by 1994, ch. 12, § 2, p. 668; am. 1995, ch. 305, § 2, p. 1054; am. 1999, ch. 396, § 6, p. 1099; am. 2001, ch. 102, § 1, p. 252; am. 2002, ch. 345, § 36, p. 963; am. 2007, ch. 56, § 1, p. 138.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 56, added the exception in subsection (4)(b).

67-6510. Mediation — Time limitations tolled.**JUDICIAL DECISIONS**

Cited in: Dry Creek Partners, LLC v. Ada County Comm'rs Ex Rel. State, 148 Idaho 11, 217 P.3d 1282 (2009).

67-6511. Zoning ordinance. — (1) Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

(a) Within a zoning district, the governing board shall where appropriate establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

(b) Within an overlay zoning district, the governing board shall establish clear and objective standards for the overlay zoning district while ensuring that application of such standards does not constitute a regulatory taking pursuant to Idaho or federal law.

(2) Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt

or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

History.

I.C., § 67-6511, as added by 1975, ch. 188, § 2, p. 515; am. 1983, ch. 121, § 1, p. 314; am. 1985, ch. 141, § 1, p. 384; am. 1987, ch. 329,

§ 1, p. 688; am. 1992, ch. 269, § 4, p. 830; am. 1999, ch. 396, § 8, p. 1099; am. 2003, ch. 142, § 1, p. 410; am. 2011, ch. 89, § 3, p. 192; am. 2013, ch. 216, § 1, p. 507.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 89, added the first sentence in subsection (c).

The 2013 amendment, by ch. 216, added the subsection and paragraph designations; in-

serted paragraph (1)(b); and substituted “paragraph (b) of this subsection” for “section 67-6511(b), Idaho Code” at the end of paragraph (2)(c).

JUDICIAL DECISIONS**ANALYSIS**

Procedure.

Review.

Uniformity.

Zoning restrictions.

Procedure.

Board of county commissioners acted within its authority under §§ 67-6509 and 67-6535(3) and Idaho Const., Art. XII, § 2 and this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. *Ciszek v. Kootenai County Bd. of Comm’rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Review.

Record on review demonstrated that the a board of county of commissioners followed the criteria set out in this section, and there was adequate evidence to support its decision to grant conditional rezoning to a property owner. *Taylor v. Canyon County Bd. of Comm’rs*, 147 Idaho 424, 210 P.3d 532 (2009).

Uniformity.

A city TDR ordinance, designed to permit

purchasers to construct buildings taller than would otherwise be permitted in the city, conflicts with the uniformity requirement of this section and is invalid under Idaho Const. art. XII, § 2. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

Zoning Restrictions.

Aesthetic concerns, including the preservation of open space and the maintenance of the rural character of a county, are valid rationales for a county to enact zoning restrictions under its police power. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Cited in: *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm’rs), 153 Idaho 298, 281 P.3d 1076 (2012).

RESEARCH REFERENCES

A.L.R. — Propriety of federal court’s abstention, under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 756, 27 L. Ed. 2d 669 (1971), to

avoid interference in ongoing state proceedings involving land use and zoning. 55 A.L.R. Fed 2d 261.

67-6512. Special use permits, conditions, and procedures. —

(a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed

use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;

- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Requiring more restrictive standards than those generally required in an ordinance;
- (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section.

History.

I.C., § 67-6512, as added by 1975, ch. 188, § 2, p. 515; am. 1985, ch. 141, § 2, p. 384; am. 1992, ch. 269, § 5, p. 830; am. 1999, ch. 396,

§ 10, p. 1099; am. 2003, ch. 142, § 2, p. 410; am. 2011, ch. 89, § 4, p. 192; am. 2012, ch. 334, §§ 1, 2, p. 926.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 89, inserted the third sentence in subsection (b).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 334, § 1, added the proviso to the end of the next-to-last sentence in subsection (b).

The 2012 amendment, by ch. 334, § 2, added subsection (f).

Compiler's Notes.

Section 3 of S.L. 2012, ch. 334, provided: "An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after passage and approval, and shall apply to all permits and approvals granted prior to the effective date hereof. In addition, special use permits that have been approved and for which all opportunities to appeal pursuant to Title 67, Chapter 65, Idaho Code, have expired as of the effective date hereof, are declared to be valid and of continuing force and effect. Provided however, that claims for damages including diminishment of value shall

not be extinguished or otherwise affected by the application of the provisions of this section. Section 1 of this act shall be in full force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 334 provided:

"(a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

"(b) Prior to granting a special use permit, at least one (1) public hearing in which inter-

ested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

“(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

“(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

“(1) Minimizing adverse impact on other development;

“(2) Controlling the sequence and timing of development;

“(3) Controlling the duration of development;

“(4) Assuring that development is maintained properly;

“(5) Designating the exact location and nature of development;

“(6) Requiring the provision for on-site or off-site public facilities or services;

“(7) Requiring more restrictive standards than those generally required in an ordinance;

“(8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

“(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

“(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section.”

JUDICIAL DECISIONS

ANALYSIS

Agency exceeded its authority.

Denial of permit proper.

Notice.

Proper procedure.

Variance.

Agency Exceeded Its Authority.

Under subsection (a) of this section, a special use permit may be granted for uses prescribed within the Boundary County, Idaho, Zoning and Subdivision Ordinance 99-06, and because operation of a gravel pit was not prescribed in the ordinance, the grant of the special use permit was improper. *Gardiner v. Boundary County Bd. of Comm'rs*, 148 Idaho 764, 229 P.3d 369 (2010), overruled on other

grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Denial of Permit Proper.

Upholding a city council's denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission's prior approval, the appellate court held that the council retained the right to review decisions of the

commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Notice.

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County board of commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors were heard and participated in each hearing. *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

Proper Procedure.

In approving a special use permit, county planning and zoning commission properly followed the law in evaluating each criterion of the applicable ordinance, *Nez Perce County, Idaho, Ordinances, Zoning Ordinance 72z*;

concluding that the application met each one, and further concluding that the application did not conflict with the goals and policies of the comprehensive plan. *Krempasky v. Nez Perce County Planning & Zoning (In re Approval of a Conditional Use Permit #CUP-2008-3)*, 150 Idaho 231, 245 P.3d 983 (2010).

Variance.

To the extent that a city ordinance permits height restrictions to be waived by a conditional/special use permit, the ordinance conflicts with § 67-6516 and is, therefore, void. Such a permit concerns the proposed use of property, not the waiver of zoning ordinance requirements, such as the maximum height of buildings. *Burns Holdings, LLC v. Teton County Bd. of Comm'rs*, 152 Idaho 440, 272 P.3d 412 (2012) (see 2012 amendment of this section).

Cited in: *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008); *Johnson v. Blaine County*, 146 Idaho 916, 204 P.3d 1127 (2009).

67-6513. Subdivision ordinance.

JUDICIAL DECISIONS

Judicial Review.

A decision regarding a subdivision application is a decision granting or denying a permit under this section and is, therefore, subject to judicial review under § 67-6519. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Ada County board of county commissioner's decision not to grant a developer additional time to obtain approval of a final plat — which was necessary to obtain a subdivision permit — essentially was a denial of the developer's application for the permit and

prevented the developer from developing its property. Because the board's decision involved the denial of a permit authorizing development, it was subject to judicial review under § 67-6519. *Dry Creek Partners, LLC v. Ada County Comm'rs Ex Rel. State*, 148 Idaho 11, 217 P.3d 1282 (2009).

Cited in: *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006); *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008).

67-6515. Planned unit developments.

JUDICIAL DECISIONS

Cited in: *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008);

Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009).

67-6515A. Transfer of development rights.**JUDICIAL DECISIONS****ANALYSIS**

Invalid ordinance.

— Review.

Purpose.

Invalid Ordinance.**— Review.**

Where city's express intention in enacting a TDR ordinance was to revitalize the downtown corridor while preserving historic buildings within that corridor, the city's focus is on buildings within the city itself, an urban focus, and it is not acting in the rural context envisioned by the legislature with this section. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

Purpose.

The plain language of this section does not allow it to be used to enact a TDR ordinance for historic preservation purposes. The language of this section evidences an intent to preserve rural values, e.g., to preserve open spaces, wildlife habitat and critical areas or agricultural land. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

67-6516. Variance — Definition — Application — Notice — Hearing.**JUDICIAL DECISIONS****ANALYSIS**

Review.

Variance.

— Improper.

— In general.

Review.

An applicant denied a variance permit by a county board of commissioners, pursuant to this section, or aggrieved by the decision of the board, may, pursuant to § 67-6519, seek judicial review under the Idaho administrative procedures act, § 67-5201 et seq. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

Variance.**— Improper.**

Where landowners violated county zoning ordinances by building decks within required setback areas without building permits, it was well within the discretion of the board of commissioners to refuse to grant variance

requests, as allowing individuals to violate the county zoning ordinances would be detrimental to the public welfare. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

— In General.

To the extent that a city ordinance permits height restrictions to be waived by a conditional/special use permit, the ordinance conflicts with this section and is, therefore, void. Such a permit concerns the proposed use of property, not the waiver of zoning ordinance requirements, such as the maximum height of buildings. *Burns Holdings, LLC v. Teton County Bd. of Comm'rs*, 152 Idaho 440, 272 P.3d 412 (2012) (see 2012 amendment of § 67-6512).

67-6517. Future acquisitions map.**JUDICIAL DECISIONS**

Cited in: *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

67-6518. Standards.**JUDICIAL DECISIONS****Highway Access.**

An ordinance which limits access to a state highway from new developments, and which was drawn up with the cooperation of the Idaho transportation department and ac-

knowledges that department's ultimate control over access to and on state highways, does not usurp the authority of the department. *Wylie v. State*, 151 Idaho 26, 253 P.3d 700 (2011).

67-6519. Application granting process. — (1) As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for zoning changes, subdivisions, variances, special use permits and such other applications required or authorized pursuant to this chapter for which a reasonable fee may be charged.

(2) Where the commission hears an application, the commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the application or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Provided however, any application which relates to a public school facility shall receive priority consideration and shall be reviewed for approval, denial or recommendation by the commission or the governing board at the earliest reasonable time, regardless of the timing of its submission relative to other applications which are not related to public school facilities.

(3) When considering an application which relates to a public school facility, the commission shall specifically review the application for the effect it will have on increased vehicular, bicycle and pedestrian volumes on adjacent roads and highways. To ensure that the state highway system or the local highway system can satisfactorily accommodate the proposed school project, the commission shall request the assistance of the Idaho transportation department if state highways are affected, or the local highway district with jurisdiction if the affected roads are not state highways. The Idaho transportation department, the appropriate local highway jurisdiction, or both as determined by the commission, shall review the application and shall report to the commission on the following issues as appropriate: the land use master plan; school bus plan; access safety; pedestrian plan; crossing guard plan; barriers between highways and school; location of school zone; need for flashing beacon; need for traffic control signal; anticipated future improvements; speed on adjacent highways; traffic volumes on adjacent highways; effect upon the highway's level of service; need for acceleration or deceleration lanes; internal traffic circulation; anticipated development on surrounding undeveloped parcels; zoning in the vicinity; access control on adjacent highways; required striping and signing modifications; funding of highway improvements to accommodate development; proposed highway projects in the vicinity; and any other issues as may be considered appropriate to the particular application.

(4) Whenever a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify:

- (a) The ordinance and standards used in evaluating the application;
- (b) The reasons for approval or denial; and
- (c) The actions, if any, that the applicant could take to obtain approval.

Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code.

History.

I.C., § 67-6519, as added by 1975, ch. 188, § 2, p. 515; am. 1993, ch. 216, § 111, p. 587;

am. 2000, ch. 431, § 1, p. 1388; am. 2003, ch. 123, § 1, p. 373; am. 2010, ch. 175, § 1, p. 359; am. 2011, ch. 279, § 1, p. 759.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, in the section heading, substituted "Application" for "Permit"; in subsection (1), inserted "zoning changes, subdivisions, variances, special use" and "and such other similar applications required or authorized pursuant to this chapter"; in subsection (2), in the first sentence, deleted "for a permit" following "application," in the second sentence, substituted "application" for "permit," and in the fourth sentence, deleted "permit" preceding "application"; in the first sentence in subsection (3), twice deleted "permit" preceding "application"; in the introductory paragraph in subsection (4), deleted "permit" preceding "application"; in paragraph (4)(c), substituted "obtain ap-

proval" for "obtain a permit"; and in the last paragraph, added the first sentence, and in the last sentence, substituted "an application" for "a permit" and inserted "final" and "concerning matters identified in section 67-6521(1)(a), Idaho Code."

The 2011 amendment, by ch. 279, substituted "Where the commission hears an application" for "Each application required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision" at the beginning of subsection (2).

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

JUDICIAL DECISIONS

Judicial Review.

Subsection (4) did not provide a right for a dairy to obtain judicial review of county ordinance changing a county comprehensive plan map where the request to change the comprehensive plan map was not an application for a permit. *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008).

A decision regarding a subdivision application is a decision granting or denying a permit under § 67-6513 and is, therefore, subject to judicial review under this section. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

An applicant denied a variance permit by a county board of commissioners, pursuant to § 67-6516, or aggrieved by the decision of the board, may, pursuant to this section, seek judicial review under the Idaho administrative procedures act, § 67-5201 et seq. *Wohrle*

v. Kootenai County, 147 Idaho 267, 207 P.3d 998 (2009).

Both § 67-6521 and this section provide for judicial review only after all remedies have been exhausted under local ordinances. Because a landowner failed to exhaust his administrative remedies before filing his petition for judicial review of a city's zoning decision, the appellate court had to vacate the decision of the trial court and remand the case with instructions to dismiss the petition for judicial review. *Rollins v. Blaine County*, 147 Idaho 729, 215 P.3d 449 (2009).

Because landowners did not appeal the denial of a permit or the conditions attached to a permit, they did not have the right to seek judicial review of administrative proceedings enforcing a zoning ordinance. *Stafford v. Kootenai County*, 150 Idaho 841, 252 P.3d 1259 (2011).

Cited in: Highlands Dev. Corp. v. City of Boise, 145 Idaho 958, 188 P.3d 900 (2008); Euclid Ave. Trust v. City of Boise, 146 Idaho 306, 193 P.3d 853 (2008); Friends of Minidoka

v. Jerome County (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

67-6520. Hearing examiners. — (1) Hearing examiners include professionally trained or licensed staff planners, attorneys, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivisions, special use permits, variances and requests for rezoning which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he may, pursuant to local ordinance, grant or deny the application or submit a recommendation to the governing board or zoning or planning and zoning commission. His decision or recommendation shall specify:

- (a) The ordinance and standards used in evaluating the application;
- (b) The reasons for the recommendation or decision; and
- (c) The actions, if any, that the applicant could take to obtain an approval.

(2) Every final decision shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may within twenty-eight (28) days after all appellate remedies have been exhausted under local ordinance seek judicial review as provided by chapter 52, title 67, Idaho Code.

History.

I.C., § 67-6520, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 7, p. 830; am.

1993, ch. 216, § 112, p. 587; am. 1996, ch. 150, § 1, p. 488; am. 1999, ch. 396, § 14, p. 1099; am. 2010, ch. 175, § 2, p. 359.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, added the subsection designations; in the first sentence in the introductory paragraph in subsection (1), inserted "attorneys," and substituted "applications for subdivisions, special use permits, variances and requests for rezoning which are in accordance with the plan" for "applications for subdivision, special use and variance permits and requests for zoning district boundary changes which are in accordance with the plan"; in paragraph (1)(c),

substituted "obtain an approval" for "obtain a permit or zoning district boundary change in accordance with the plan approval"; and in subsection (2), added the first sentence, and in the last sentence, substituted "an application" for "a permit," and inserted "final" and "concerning matters identified in section 67-6521(1)(a), Idaho Code."

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

JUDICIAL DECISIONS

Hearing Procedure.

While a single hearing examiner could conduct a land use planning hearing if authorized by local ordinance, where the applicable

ordinance specifically called for a five-member appeal board, the county employed unlawful procedure. However, although the initial hearing was held upon unlawful procedure,

the landowner's substantial rights had not been prejudiced thereby. *Spencer v. Kootenai County*, 145 Idaho 448, 180 P.3d 487 (2008).

67-6521. Actions by affected persons. — (1)(a) As used herein, an affected person shall mean one having a bona fide interest in real property which may be adversely affected by:

- (i) The approval, denial or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter;
- (ii) The approval of an ordinance first establishing a zoning district upon annexation or the approval or denial of an application to change the zoning district applicable to specific parcels or sites pursuant to section 67-6511, Idaho Code; or
- (iii) An approval or denial of an application for conditional rezoning pursuant to section 67-6511A, Idaho Code.

(b) Any affected person may at any time prior to final action on an application required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67-6512, Idaho Code; provided however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

- (i) Grant or deny an application; or
- (ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by ordinance or resolution a time period within which a recommendation or decision must be made.

(d) Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An affected person aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code.

(2)(a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

(b) An affected person claiming "just compensation" for a perceived "taking," the basis of the claim being that a final action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect

by local government to provide “just compensation” under the provisions of section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

History.

I.C., § 67-6521, as added by 1975, ch. 188, § 2, p. 515; am. 1993, ch. 216, § 113, p. 587;

am. 1996, ch. 199, § 1, p. 620; am. 2010, ch. 175, § 3, p. 359.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, in the introductory language in paragraph (1)(a), inserted “bona fide”; added the paragraph (1)(a)(i) designation and therein rewrote the paragraph, which formerly read: “the issuance or denial of a permit authorizing the development”; added paragraphs (1)(a)(ii) and (1)(a)(iii); in paragraphs (1)(b) and (1)(c)(i), substituted “an application” for “a permit”; in paragraph (1)(c)(ii), substituted “ordinance or resolution” for “rule and regu-

lation”; in subsection (1)(d), added the first sentence, and in the last sentence, inserted “final” and “concerning matters identified in section 67-8003”; and in the first sentence in paragraph (2)(b), substituted “a final action” for “a specific zoning action or permitting action.”

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

JUDICIAL DECISIONS

ANALYSIS

Affected person.

Judicial review.

—Timely filing.

Review of commission decision.

Standing.

Affected Person.

This section did not provide any right for a dairy to obtain judicial review of the county's ordinance changing a county comprehensive plan map where the amendment to the comprehensive plan map did not authorize development and, thus, the dairy was not an affected person under the statute. *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008).

Neighboring property owner was an affected person entitled to seek judicial review of approval of a planned unit development because he could be adversely affected by the approval of a development that would have higher housing densities than permitted by the underlying zoning district. *Johnson v. Blaine County*, 146 Idaho 916, 204 P.3d 1127 (2009).

Group of neighbors were not entitled to judicial review of a county board's decision to allow amendment of a comprehensive county plan, designating the area in which they owned land as rural, because the redesignation of the area was not a permit authorizing or prohibiting development; therefore, the neighbors were not “affected persons” under this section. *Neighbors for Responsible Growth v. Kootenai County*, 147 Idaho 173, 207 P.3d 149 (2009).

Judicial Review.

Both § 67-6519 and this section provide for judicial review only after all remedies have been exhausted under local ordinances. Because a landowner failed to exhaust his administrative remedies before filing his petition for judicial review of a city's zoning decision, the appellate court had to vacate the decision of the trial court and remand the case with instructions to dismiss the petition for judicial review. *Rollins v. Blaine County*, 147 Idaho 729, 215 P.3d 449 (2009).

Paragraph (1)(d) does not provide a basis for judicial review of a county board of commissioners' denial of an application for amendment to the comprehensive plan. *Burns Holdings, LLC v. Madison County Bd.*, 147 Idaho 660, 214 P.3d 646 (2009).

A land owner may not appeal, under § 31-1506, the granting of a request for rezoning by a county in favor of an adjacent land owner. Any judicial review of a such a request should be governed by the provisions of the Local Land Use Planning Act, and specifically this section, which prior to a 2010 amendment also precluded such a judicial appeal. *Giltner Dairy, LLC v. Jerome County*, 150 Idaho 559, 249 P.3d 358 (2011).

Because landowners did not appeal the denial of a permit or the conditions attached

to a permit, they did not have the right to seek judicial review of administrative proceedings enforcing a zoning ordinance. *Stafford v. Kootenai County*, 150 Idaho 841, 252 P.3d 1259 (2011).

Landowner had standing to file a petition for review because 1) he feared that allowing the neighboring landowners to construct new homes on their properties would cause the occupants to use the road on his land more frequently, potentially exceeding the scope of any preexisting easements and increasing the risk that someone could allow his livestock to escape through an open gate; and 2) he feared that emergency vehicles might not be able to reach his neighbors' properties, potentially preventing them from combating a fire that could spread to his land. *Hawkins v. Bonneville County Bd. of Comm'rs*, 151 Idaho 228, 254 P.3d 1224 (2011).

—Timely Filing.

Appeal from the granting of a livestock confinement permit should not have been dismissed as untimely because county commissioners caused confusion regarding the 28-day time period in their decision, and it was reasonable for an objector to read the decision as setting a certain date as the final date of appeal. *Halper v. Jerome County*, 143 Idaho 691, 152 P.3d 562 (2007).

Review of Commission Decision.

Upholding a city council's denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission's prior approval, the appellate court held that the coun-

cil retained the right to review decisions of the commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Standing.

Organization lacked standing to challenge the issuance of a permit to operate a livestock confinement operation (LCO), where there was no specific allegation that any identified member of the organization had standing to sue in the member's own right and no member lived in proximity to the proposed LCO site or would have been harmed by its presence. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Individuals who lived within one mile a proposed livestock confinement operation had standing to challenge the issuance of a permit for the operation, because evidence was presented to the board of county commissioners regarding the probable compromised resale value of existing homes in the area, of an increase in unpleasant odors, and of an increase in possible health concerns. Each of these could be categorized as threatened harm. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Cited in: *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006); *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008); *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

RESEARCH REFERENCES

A.L.R. — Propriety of federal court's abstention, under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 756, 27 L. Ed. 2d 669 (1971), to

avoid interference in ongoing state proceedings involving land use and zoning. 55 A.L.R. Fed 2d 261.

67-6522. Combining of permits — Permits to assessor. — Where practical, the governing board or zoning or planning and zoning commission may combine related permits for the convenience of applicants. State and federal agencies should make every effort to combine or coordinate related permits with the local governing board or commission. In no event shall the governing board by local ordinance enact provisions that abrogate the statutory authority of a public health district, state and/or federal agency. Appropriate permits as defined by local ordinance shall be forwarded to the county assessor.

History.

I.C., § 67-6522, as added by 1975, ch. 188, p. 515; am. 2013, ch. 216, § 2, p. 507.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 216, inserted the next-to-last sentence.

67-6525. Plan and zoning ordinance changes upon annexation of unincorporated area.

JUDICIAL DECISIONS

Judicial Review.

Corporation's appeal of a city's zoning and annexation ordinance was dismissed because applicable statute did not grant any right of judicial review regarding either the annexation decision or the zoning decision. *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008).

District court properly dismissed appellant residents' petition for judicial review of respondent city's decision to annex land. There was no authorization of judicial review of a category A annexation under § 50-222, or under this section. In re *City of Shelley*, 151 Idaho 289, 255 P.3d 1175 (2011).

67-6526. Areas of city impact — Negotiation procedure.

JUDICIAL DECISIONS

Zoning Decisions.

While a county and a city can agree that the city comprehensive plan and zoning ordinances will apply in the unincorporated area of the county that is within the city's area of city impact, the county must adopt an ordinance providing for the application of the city

plan and zoning ordinances in the area of city impact and the county cannot delegate to the city the power to make zoning decisions beyond the city's limits. *Burns Holdings, LLC v. Teton County Bd. of Comm'rs*, 152 Idaho 440, 272 P.3d 412 (2012).

67-6528. Applicability of ordinances.

JUDICIAL DECISIONS

Highway Access.

An ordinance which limits access to a state highway from new developments, and which was drawn up with the cooperation of the Idaho transportation department and ac-

knowledges that department's ultimate control over access to and on state highways, does not usurp the authority of the department. *Wylie v. State*, 151 Idaho 26, 253 P.3d 700 (2011).

67-6529. Applicability to agricultural land — Counties may regulate siting of certain animal operations and facilities.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Procedural due process.

Standing.

Constitutionality.

One-mile exclusion in subsection (2), limiting required participation at a public hearing for the issuance of a permit to operate a livestock confinement operation (LCO) to

those having a primary residence within one mile of the proposed LCO site, did not violate parties' due process or equal protection rights, as the one mile radius limitation is rationally related to a legitimate governmental purpose.

Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

Procedural Due Process.

Procedural due process rights of parties that objected to the issuance of a permit for the operation of a livestock confinement operation were not violated by a board of county commissioners, where the parties were provided with notice and an opportunity to be heard at a hearing before the board, notice of the procedures for the hearing was mailed to the property owners within a one-mile radius of the proposed site and published in the local newspaper, and the parties were allotted four minutes for oral testimony before the board, along with one 8.5" x 11" single-sided sheet of paper as an exhibit (or two sheets if one chose not to testify). *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

Standing.

Organization lacked standing to challenge

the issuance of a permit to operate a livestock confinement operation (LCO), where there was no specific allegation that any identified member of the organization had standing to sue in the member's own right and no member lived in proximity to the proposed LCO site or would have been harmed by its presence. *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

Individuals who lived within one mile a proposed livestock confinement operation had standing to challenge the issuance of a permit for the operation, because evidence was presented to the board of county commissioners regarding the probable compromised resale value of existing homes in the area, of an increase in unpleasant odors, and of an increase in possible health concerns. Each of these could be categorized as threatened harm. *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

OPINIONS OF ATTORNEY GENERAL

Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has

completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

67-6529A. Short title.

OPINIONS OF ATTORNEY GENERAL

Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has

completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

67-6529C. Definitions. — As used in this act, the following definitions shall apply:

(1) "CAFO," also referred to as "concentrated animal feeding operation" or "confined animal feeding operation," means, for those counties that have requested a site suitability determination, a CAFO as defined in the applicable ordinance of the county wherein the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means a lot or facility where the following conditions are met:

- (a) Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period;
- (b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) The lot or facility is designed to confine or actually does confine as many as or more than the numbers of animals specified in any of the following categories: seven hundred (700) mature dairy cows, whether milked or dry; one thousand (1,000) veal calves; one thousand (1,000) cattle other than mature dairy cows or veal calves; two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; five hundred (500) horses; ten thousand (10,000) sheep or lambs; or eighty-two thousand (82,000) chickens.

Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes;

(2) “CAFO site advisory team” shall mean representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources who review a site proposed for a CAFO, determine environmental risks and submit a suitability determination to a county. The department of agriculture shall serve as the lead agency for the team;

(3) “Environmental risk” shall mean that risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team’s suitability determination report;

(4) “Suitability determination” shall mean that document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

History.

I.C., § 67-6529C, as added by 2001, ch. 381,

§ 3, p. 1336; am. 2006, ch. 218, § 1, p. 653; am. 2011, ch. 180, § 1, p. 511.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 180, rewrote the introductory paragraph in subsection (1), which formerly read: “‘CAFO,’ also referred to as ‘concentrated animal feeding operation’ or ‘confined animal feeding operation,’ means a

lot or facility where the following conditions are met.”

Effective Dates.

Section 4 of S.L. 2011, ch. 180 declared an emergency. Approved April 5, 2011.

67-6529D. Odor management plans — County request for suitability determination — Local regulation.

JUDICIAL DECISIONS

County Ordinance.

Where a dairymen’s association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations

(CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., art. XII, § 2. While § 42-101 provided that control over the appropriation of water was vested in the state, regulation of water quality by local government was not preempted

under subsections (1) and (3) of this section. Because of Idaho's diverse geographical setting, water regulation at CAFOs does not call

for a uniform regulatory scheme. *Idaho Dairy-men's Ass'n v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).

67-6529E. Process for county request — Contents of the request.

— (1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

(2) Information in the request shall include, but not be limited to, the county's definition of "CAFO" as set forth in any applicable county ordinance, the relevant legal description and address of a proposed facility, the actual animal capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps and any other information relevant to the site that will assist the site advisory team in issuing its suitability determination. The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

History.

I.C., § 67-6529E, as added by 2001, ch. 381,

§ 5, p. 1336; am. 2006, ch. 218, § 2, p. 653; am. 2011, ch. 180, § 2, p. 511.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 180, inserted "the county's definition of 'CAFO' as set forth in any applicable county ordinance" in subsection (2).

Effective Dates.

Section 4 of S.L. 2011, ch. 180 declared an emergency. Approved April 5, 2011.

67-6529H. Site suitability determination — Application fees. —

(1) The board of county commissioners shall collect a CAFO site suitability fee from each applicant that will require a suitability determination by the site advisory team. The fee shall be one thousand two hundred dollars (\$1,200) plus mileage and per diem calculated based on distance traveled from the department of agriculture's Boise office to the proposed CAFO site. Mileage and per diem shall not exceed the established state rate existing at the time of the suitability determination.

(a) The board of county commissioners requesting the suitability determination shall forward the CAFO site suitability fee to the department of agriculture at the time of the request;

(b) Whenever the cost of the suitability determination is less than one thousand two hundred dollars (\$1,200) plus per diem and mileage, the difference shall be refunded to the applicant by the department of agriculture;

(c) The department of agriculture shall distribute the fee to the site advisory team on a pro rata basis according to time spent by team members on the suitability determination.

(2) Any applicant subject to the butterfat assessment pursuant to section

37-407, Idaho Code, following the issuance of a permit is hereby exempt from paying the CAFO site suitability fee.

(3) Any applicant subject to a brand inspection fee pursuant to section 25-1160, Idaho Code, is exempt from paying the CAFO site suitability fee.

History.

I.C., § 67-6529H, as added by 2011, ch. 180, § 3, p. 511.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2011, ch. 180 declared an emergency. Approved April 5, 2011.

67-6530. Declaration of purpose. — The legislature declares that it is the policy of this state that persons with disabilities or elderly persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer persons with disabilities or elderly persons is a residential use of such property for the purposes of local zoning.

History.

I.C., § 67-6530, as added by 1979, ch. 319, § 1, p. 858; am. 1993, ch. 18, § 1, p. 70; am. 2010, ch. 235, § 61, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, twice substituted “persons with disabilities” for “mentally and/or physically handicapped.”

JUDICIAL DECISIONS

Applicability.

Because the provisions of §§ 67-6531 and 67-6532 and this section apply to zoning and zoning-like cases, a water and sewer district must treat, and charge fees against, an assisted care facility of eight (8) or fewer unrelated persons as a single-family residence, despite the definitions used in the district’s ordinances. *Hayden Lake Rec. Water & Sewer Dist. v. Haydenview Cottage, LLC*, 835 F. Supp. 2d 965 (D. Idaho 2011).

67-6531. Single family dwelling. — (1) For the purpose of any zoning law, ordinance or code, the classification “single family dwelling” shall include any group residence in which eight (8) or fewer unrelated persons with disabilities or elderly persons reside and who are supervised at the group residence in connection with their disability or age related infirmity.

(2) Resident staff, if employed, need not be related to each other or to any of the persons with disabilities or elderly persons residing in the group residence.

(3) No more than two (2) of such staff shall reside in the dwelling at any one time.

History.

I.C., § 67-6531, as added by 1979, ch. 319, § 1, p. 858; am. 1993, ch. 18, § 2, p. 70; am.

2008, ch. 123, § 1, p. 342; am. 2010, ch. 235, § 62, p. 542.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 123, in subsections (a) and (b), substituted “group residence” for “home”; and in subsection (a), added “at the group residence in connection with their handicap or age related infirmity.”

The 2010 amendment by ch. 235, redesignated the subsections numerically; in subsections (1) and (2), substituted “persons with disabilities” for “mentally and/or physically handicapped” and in subsection (1) substituted “disability” for “handicap”.

Effective Dates.
Section 3 of S.L. 2008, ch. 123 declared an emergency. Approved March 17, 2008.

JUDICIAL DECISIONS**Applicability.**

Because the provisions of §§ 67-6530 and 67-6532 and this section apply to zoning and zoning-like cases, a water and sewer district must treat, and charge fees against, an assisted care facility of eight (8) or fewer unrelated persons as a single-family residence, despite the definitions used in the district's ordinances. *Hayden Lake Rec. Water & Sewer Dist. v. Haydenview Cottage, LLC*, 835 F. Supp. 2d 965 (D. Idaho 2011).

67-6532. Licensure, standards and restrictions. — (1) The department of health and welfare may require group residences, as defined in section 67-6531, Idaho Code, to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential or assisted living facility rules, or under the intermediate care facilities for people with intellectual disabilities or related conditions rules, or under rules specifically written for such group residences.

(2) No conditional use permit, zoning variance, or other zoning clearance shall be required of a group residence, as defined in section 67-6531, Idaho Code, which is not required of a single family dwelling in the same zone.

(3) No local ordinances or local restrictions shall be applied to or required for a group residence, as defined in section 67-6531, Idaho Code, which is not applied to or required for a single family dwelling in the same zone.

(4) The limitations provided for in subsections (2) and (3) of this section shall not apply to tenancy or planned tenancy in a group residence, as defined in section 67-6531, Idaho Code, by persons who are under the supervision of the state board of correction pursuant to section 20-219, Idaho Code, or who are required to register pursuant to chapter 83 or 84, title 18, Idaho Code, or whose tenancy would otherwise constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

History.

I.C., § 67-6532, as added by 1979, ch. 319, § 1, p. 858; am. 1989, ch. 193, § 17, p. 475;

am. 1993, ch. 18, § 3, p. 70; am. 2000, ch. 274, § 154, p. 799; am. 2008, ch. 123, § 2, p. 342; am. 2010, ch. 235, § 63, p. 542.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 123, in subsection (a), substituted “group residences” for “such residences” and inserted “as defined in

section (a), substituted “group residences” for “such residences” and inserted “as defined in

section 67-6531, Idaho Code,” in the first sentence and, in the last sentence, inserted “group”; in subsections (b) and (c), substituted “group residence, as defined in section 67-6531, Idaho Code” for “residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code”; and added subsection (d).

The 2010 amendment, by ch. 235, redesignated the subsections numerically; and in the last sentence in subsection (1), substituted “people with intellectual disabilities” for “mentally retarded.”

Effective Dates.

Section 3 of S.L. 2008, ch. 123 declared an emergency. Approved March 17, 2008.

JUDICIAL DECISIONS

Applicability.

Because the provisions of §§ 67-6530 and 67-6531 and this section apply to zoning and zoning-like cases, a water and sewer district must treat, and charge fees against, an assisted care facility of eight (8) or fewer unre-

lated persons as a single-family residence, despite the definitions used in the district's ordinances. *Hayden Lake Rec. Water & Sewer Dist. v. Haydenview Cottage, LLC*, 835 F. Supp. 2d 965 (D. Idaho 2011).

67-6534. Adoption of hearing procedures.

JUDICIAL DECISIONS

Procedure.

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County board of commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors

were heard and participated in each hearing. *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

Cited in: *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

67-6535. Approval or denial of any application to be based upon express standards and to be in writing. — (1) The approval or denial of any application required or authorized pursuant to this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval. Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of

an approved permit or site-specific authorization, or denial of same, on appeal.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

(3) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code. An appeal shall be from the final decision and not limited to issues raised in the request for reconsideration.

History.

I.C., § 67-6535, as added by 1982, ch. 129, § 2, p. 371; am. 1999, ch. 396, § 17, p. 1099;

am. 2003, ch. 142, § 8, p. 410; am. 2010, ch. 175, § 4, p. 359; am. 2013, ch. 216, § 3, p. 507.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, redesignated the subsections numerically; in subsections (1) and (2), substituted "any application required or authorized pursuant to this chapter" for "any application provided for in this chapter"; and added the last sentence in subsection (3).

The 2013 amendment, by ch. 216, inserted "express" in the section heading; added the last two sentences in subsection (1); added paragraphs (2)(a) and (2)(b); and, in subsection (3), added the last sentence.

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

JUDICIAL DECISIONS

ANALYSIS

Conclusory statements.
 Judicial review.
 Procedure.
 Unauthorized visit.

Conclusory Statements.

Because the findings and conclusions of a county board of commissioners consisted of conclusory statements unsupported by any reasoned explanation, they did not meet the requirements of subsection (2) and lacked the information needed for meaningful judicial review of the board's approval of a preliminary plat application, which prejudiced the adjacent owners' substantial right to due process. *Jasso v. Camas County*, 151 Idaho 790, 264 P.3d 897 (2011).

Judicial Review.

The Local Land Use Planning Act does not mention any permit related to the annexation of land by a city, and the developer did not argue that the city denied it any permit required or authorized under the Act; therefore, the Act did not authorize judicial review. *Black Labrador Investing, LLC v. Kuna City Council*, 147 Idaho 92, 205 P.3d 1228 (2009).

Procedure.

County board of commissioners complied with the requirements of this statute because it included the criteria and standards it considered relevant in its decision to issue a permit for the building of a subdivision, and it provided detailed facts, and explained its rationale for its decisions. Therefore, the board's written findings and conclusions did not violate a challenging landowner's due process rights. *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006).

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County

board of commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors were heard and participated in each hearing. *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

Board of county commissioners acted within its authority under §§ 67-6509 and 67-6511 and Idaho Const., Art. XII, § 2 and subsection (3) of this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. *Ciszek v. Kootenai County Bd. of Comm'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Unauthorized Visit.

Where a planning commissioner visited the site of a proposed subdivision without notifying the applicant beforehand of his visit, no actual harm to the applicant was shown, even though the application was denied by the board of county commissioners, where no evidence was presented that the commissioner's visit affected the planning and zoning commission's unanimous recommendation, tainted the full commission's subsequent site visit, or prejudiced the board of county commissioners' subsequent unanimous decision to deny the application. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Cited in: *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

67-6537. Use of surface and ground water.

JUDICIAL DECISIONS

Local Regulation.

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., art. XII, § 2. While § 42-101 provided that con-

trol over the appropriation of water was vested in the state, local governing boards have the authority under this section to consider the effect any proposed amendments to the comprehensive plan would have on the water quantity in the area. *Idaho Dairymen's Ass'n v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).

CHAPTER 66

ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES — LOBBYISTS

SECTION.

67-6602. Definitions.

67-6607. Reports of contributions and expenditures.

SECTION.

67-6610A. Limitations on contributions.

67-6619. Reporting by lobbyists.

67-6623. Duties of secretary of state.

67-6601. Purpose of act.**RESEARCH REFERENCES**

A.L.R. — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts. 35 A.L.R.6th 1.

67-6602. Definitions. — As used in this chapter, the following terms have the following meanings:

(a) “Candidate” means an individual who has taken affirmative action to seek nomination or election to public office. An individual shall be deemed to have taken affirmative action to seek such nomination or election to public office when he first:

(1) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(2) Announces publicly or files for office.

(3) For purposes of this chapter, an incumbent shall be presumed to be a candidate in the subsequent election for his or her office. Contributions received by an incumbent candidate shall not be in excess of the prescribed contribution limits for the subsequent election by which the incumbent candidate’s name would first appear on the ballot. An incumbent shall no longer be a candidate for his or her office after the deadline for the filing of a declaration of candidacy to first appear on the ballot for that office has expired.

(b) “Compensation” includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to do any of the foregoing, for services rendered or to be rendered, but does not include reimbursement of expenses if such reimbursement does not exceed the amount actually expended for such expenses and is substantiated by an itemization of such expenses.

(c) “Contribution” includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, subscription or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee or measure. Such term also includes personal funds or other property of a candidate or members of his household expended or transferred to cover expenditures incurred in support of such candidate but does

not include personal funds used to pay the candidate filing fee. Such term also includes the rendering of personal and professional services for less than full consideration, but does not include ordinary home hospitality or the rendering of "part-time" personal services of the sort commonly performed by volunteer campaign workers or advisors or incidental expenses not in excess of twenty-five dollars (\$25.00) personally paid for by any volunteer campaign worker. "Part-time" services for the purposes of this definition, means services in addition to regular full-time employment, or, in the case of an unemployed person or persons engaged in part-time employment, services rendered without compensation or reimbursement of expenses from any source other than the candidate or political committee for whom such services are rendered. For the purposes of this act, contributions, other than money or its equivalent shall be deemed to have a money value equivalent to the fair market value of the contribution.

(d) "Election" means any general, special or primary election.

(e) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a measure.

(f)(1) "Electioneering communication" means any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or telephone calls made to personal residences, or otherwise distributed that:

(i) Unambiguously refers to any candidate; and

(ii) Is broadcasted, printed, mailed, delivered, made or distributed within thirty (30) days before a primary election or sixty (60) days before a general election; and

(iii) Is broadcasted to, printed in a newspaper, distributed to, mailed to or delivered by hand to, telephone calls made to, or otherwise distributed to an audience that includes members of the electorate for such public office.

(2) "Electioneering communication" does not include:

(i) Any news articles, editorial endorsements, opinion or commentary, writings, or letter to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by a candidate or political party;

(ii) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(iii) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(iv) Any communication which refers to any candidate only as part of the popular name of a bill or statute;

(v) A communication which constitutes an expenditure or an independent expenditure under this chapter.

(g) "Executive official" means:

(1) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, superintendent of public instruction and any deputy or staff member of one (1) of those individuals who, within

the course and scope of his or her employment, is directly involved in major policy influencing decisions for the office;

(2) A state department or agency director, deputy director, division administrator or bureau chief as established and enumerated in sections 67-2402 and 67-2406, Idaho Code;

(3) The membership and the executive or chief administrative officer of any board or commission that is authorized to make rules or conduct rulemaking activities pursuant to section 67-5201, Idaho Code;

(4) The membership and the executive or chief administrative officer of any board or commission that governs any of the state departments enumerated in section 67-2402, Idaho Code, not including public school districts;

(5) The membership and the executive or chief administrative officer of the Idaho public utilities commission, the Idaho industrial commission, and the Idaho state tax commission; and

(6) The members of the governing board of the state insurance fund, and the members of the governing board and the executive or chief administrative officer of the Idaho housing and finance association, the Idaho energy resources authority, and the Idaho state building authority.

(h) "Expenditure" includes any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(i) "Independent expenditure" means any expenditure by a person for a communication expressly advocating the election, passage or defeat of a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the consent of, or in consultation with, or at the request of a suggestion of, a candidate or any agent or authorized committee of the candidate or political committee supporting or opposing a measure. As used in this subsection, "expressly advocating" means any communication containing a message advocating election, passage or defeat including, but not limited to, the name of the candidate or measure, or expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat" or "reject."

(j) "Lobby" and "lobbying" each means attempting through contacts with, or causing others to make contact with, members of the legislature or legislative committees or an executive official, to influence the approval, modification or rejection of any legislation by the legislature of the state of Idaho or any committee thereof or by the governor or to develop or maintain relationships with, promote goodwill with, or entertain members of the legislature or executive officials. "Lobby" and "lobbying" shall also mean communicating with an executive official for the purpose of influencing the consideration, amendment, adoption or rejection of any rule or rulemaking as defined in section 67-5201, Idaho Code, or any ratemaking decision,

procurement, contract, bid or bid process, financial services agreement, or bond issue. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization; and provided that neither "lobby" nor "lobbying" includes communicating with an executive official for the purpose of carrying out ongoing negotiations following the award of a bid or a contract, communications involving ongoing legal work and negotiations conducted by and with attorneys for executive agencies, interactions between parties in litigation or other contested matters, or communications among and between members of the legislature and executive officials and their employees, or by state employees while acting in their official capacity or within the course and scope of their employment.

(k) "Lobbyist" includes any person who lobbies.

(l) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed, directly or indirectly, and all persons by whom he is compensated for acting as a lobbyist.

(m) "Measure" means any proposal, to be voted statewide, submitted to the people for their approval or rejection at an election, including any initiative, referendum, recall election for statewide or legislative district offices, or revision of or amendment to the state constitution. An initiative or referendum proposal shall be deemed a measure when the attorney general reviews it and gives it a ballot title. A recall shall be deemed a measure upon approval of the recall petition as to form pursuant to section 34-1704, Idaho Code.

(n) "Nonbusiness entity" means any group (of two (2) or more individuals), corporation, association, firm, partnership, committee, club or other organization which:

(1) Does not have as its principal purpose the conduct of business activities for profit; and

(2) Received during the preceding calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten percent (10%) of its total receipts for such year.

(o) "Person" means an individual, corporation, association, firm, partnership, committee, political party, club or other organization or group of persons.

(p) "Political committee" means:

(1) Any person specifically designated to support or oppose any candidate or measure; or

(2) Any person who receives contributions and makes expenditures in an amount exceeding five hundred dollars (\$500) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures. Any entity registered with the federal election commission shall not be considered a political committee for purposes of this chapter.

(3) A county, district or regional committee of a recognized political party shall not be considered a political committee for the purposes of this chapter unless such party committee has expenditures exceeding five thousand dollars (\$5,000) in a calendar year.

(q) "Political treasurer" means an individual appointed by a candidate or political committee as provided in section 67-6603, Idaho Code.

(r) “Public office” means any state office or position, state senator, state representative, and judge of the district court that is filled by election.

History.

Init. Measure 1974, No. 1, § 2; am. 1977, ch. 180, § 1, p. 502; am. 1978, ch. 58, § 1, p. 112; am. 1986, ch. 218, § 1, p. 554; am. 1992, ch. 196, § 1, p. 605; am. 1993, ch. 189, § 1, p. 481; am. 1994, ch. 5, § 1, p. 6; am. 1994, ch.

379, § 1, p. 1218; am. 1997, ch. 393, § 1, p. 1249; am. 1999, ch. 176, § 1, p. 476; am. 2001, ch. 291, § 2, p. 1028; am. 2004, ch. 277, § 3, p. 767; am. 2005, ch. 254, § 1, p. 777; am. 2006, ch. 106, § 2, p. 294; am. 2008, ch. 306, § 1, p. 847; am. 2012, ch. 162, § 3, p. 437.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 306, in paragraph (g)(1), added the language beginning “and any deputy or staff member of one (1) of those individuals”; and in the first sentence in subsection (j), added “or to develop or maintain relationships with, promote goodwill

with, or entertain members of the legislature or executive officials.”

The 2012 amendment, by ch. 162, in subsection (m), inserted “recall election for statewide or legislative district offices” in the first sentence and added the last sentence.

67-6607. Reports of contributions and expenditures. — (a) The political treasurer for each candidate and the political treasurer of each political committee shall file with the secretary of state:

- (1) Not more than fourteen (14) days and not less than seven (7) days before the date of a primary election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee prior to the fifteenth day before the primary election;
- (2) Not more than thirty (30) days after the date of a primary election in which a candidate or a political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee to cover the period since the fifteenth day before the primary election to and including the tenth day after the primary election;
- (3) For all political committees supporting or opposing measures, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the measure or any candidate or made by or against the measure or any candidate shall be filed on the same dates provided in paragraphs (1), (2), (4), (5) and (6) of this subsection;
- (4) Not later than October 10 immediately preceding a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee since and including the eleventh day after the date of the primary election and to and including September 30;
- (5) Not more than fourteen (14) days and not less than seven (7) days before the date of a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee since and including October 1 and to and including the sixteenth day before the general election, together with a cumulative statement showing all such contributions and expenditures or encum-

branches to and including the sixteenth day before the general election; and

(6) Not more than thirty (30) days after the date of a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee to cover the period since the fifteenth day before the general election to and including the tenth day after the general election.

(b) For the first report under this section the reporting period shall cover the period beginning with the first contribution, expenditure, or encumbrance.

(c) Notwithstanding any other reports required under this section, the political treasurer for each candidate and any political committee supporting or opposing a measure shall notify the secretary of state, in writing, of any contribution of one thousand dollars (\$1,000) or more, received by the political treasurer after the sixteenth day before, but more than forty-eight (48) hours before, any primary or general election. This notification shall be made within forty-eight (48) hours after the receipt of such contribution and shall include the name of the candidate or measure, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions in the postelection report.

(d) For all reports required pursuant to this section the secretary of state shall accept the date of a postmark as the date of receipt except for the seven (7) day preelection reports which must be received by no later than 5:00 p.m. on the seventh day preceding the primary or general election.

(e) Any reports required to be filed under the provisions of this section may also be filed by means of an electronic facsimile transmission machine and may be filed by other electronic means as approved by the secretary of state.

History.

Init. Measure 1974, No. 1, § 7; am. 1977, ch. 225, § 1, p. 670; am. 1986, ch. 218, § 2, p. 554; am. 1987, ch. 344, § 2, p. 731; am. 1990,

ch. 62, § 2, p. 137; am. 1992, ch. 196, § 2, p. 605; am. 1993, ch. 203, § 1, p. 557; am. 1994, ch. 379, § 2, p. 1218; am. 2002, ch. 240, § 1, p. 715; am. 2010, ch. 22, § 1, p. 38.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 22, at the end of subsection (e), added “and may be filed by

other electronic means as approved by the secretary of state”.

67-6610A. Limitations on contributions. — (1) Except as provided in subsection (2) of this section, aggregate contributions for a primary election or a general election made by a corporation, political committee, other recognized legal entity or an individual, other than the candidate, to a candidate for the state legislature, and political committees organized on the candidate's behalf shall be limited to an amount not to exceed one thousand dollars (\$1,000) for the primary election and an amount not to exceed one thousand dollars (\$1,000) for the general election. Aggregate

contributions for a primary election or a general election by a corporation, political committee, other recognized legal entity or an individual, other than the candidate, to a candidate for statewide office and political committees organized on the candidate's behalf shall be limited to an amount not to exceed five thousand dollars (\$5,000) for the primary election and an amount not to exceed five thousand dollars (\$5,000) for the general election.

(2) Aggregate contributions for a primary election or for a general election made by a county central committee or by the state central committee of the political parties qualified under section 34-501, Idaho Code, to a candidate for the state legislature, and political committees organized on the candidate's behalf shall be limited to an amount not to exceed two thousand dollars (\$2,000) for the primary election and an amount not to exceed two thousand dollars (\$2,000) for the general election. Aggregate contributions for the primary election or the general election by the state central committee of the political parties qualified under section 34-501, Idaho Code, to a candidate for statewide office and political committees organized on the candidate's behalf shall be limited to an amount not to exceed ten thousand dollars (\$10,000) for the primary election and an amount not to exceed ten thousand dollars (\$10,000) for the general election.

(3) For purposes of this section "statewide office" shall mean an office in state government which shall appear on the primary or general election ballot throughout the state.

(4) Recall elections, for purposes of this section, shall be treated the same as general elections for contribution limits.

(5) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. A contribution of this kind shall be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the contributor. Contributions shall not include the personal services of volunteers.

(6) The contribution limits for the state legislature shall apply to judicial district offices, city offices and county offices regulated by this chapter.

(7) For the purposes of contribution limits, the following apply:

(a) A contribution by a political committee with funds that have all been contributed by one (1) person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(b) All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained or controlled by a trade association, labor union or collective bargaining organization shall be considered a contribution from such trade association, labor union or collective bargaining organization.

(c) Two (2) or more entities are treated as a single entity if the entities:

(i) Share the majority of members on their board of directors;

(ii) Share two (2) or more officers;

(iii) Are owned or controlled by the same majority shareholder or shareholders or persons;

(iv) Are in a parent-subsidiary relationship; or

(v) Have bylaws so stating.

(8) The provisions of this section are hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this section.

History.

I.C., § 67-6610A, as added by 1997, ch. 393, § 3, p. 1249; am. 2004, ch. 19, § 1, p. 21; am.

2006, ch. 23, § 1, p. 80; am. 2012, ch. 162, § 4, p. 437.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 162, added

subsection (4) and renumbered the subsequent subsections accordingly.

RESEARCH REFERENCES

A.L.R. — Construction and application of supreme court's holding in *Citizens United v. Federal Election Com'n*, 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159

Lab. Cas. (CCH) P 10166 (2010), That government may not prohibit independent and indirect corporate expenditures on political speech. 65 A.L.R.6th 503.

67-6614A. Publication or distribution of political statements.

RESEARCH REFERENCES

A.L.R. — Constitutionality, construction, and application of statute or regulatory action respecting political advertising — Print media cases. 51 A.L.R.6th 359.

Constitutionality, construction, and appli-

cation of statute or regulatory activity respecting political advertising nonprint media cases, or cases implicating both print and nonprint media. 53 A.L.R.6th 491.

67-6617. Registration of lobbyists.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state and municipal enactments reg-

ulating lobbying and of lobbying contracts. 35 A.L.R.6th 1.

67-6618. Exemption from registration.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state and municipal enactments reg-

ulating lobbying and of lobbying contracts. 35 A.L.R.6th 1.

67-6619. Reporting by lobbyists. — (1) Any lobbyist registered under section 67-6617, Idaho Code, shall file with the secretary of state an annual report of his lobbying activities signed by both the lobbyist and the lobbyist's employer or employers. The reports shall be made in the form and manner prescribed by the secretary of state and shall be filed on January 31 of each year. In addition to the annual report, while the legislature is in session, every registered lobbyist shall file interim monthly periodic reports for each

month or portion thereof that the legislature is in session, which reports need to be signed only by the lobbyist and which shall be filed within fifteen (15) days of the first day of the month for the activities of the month just past, provided however, that any lobbyist covered under this chapter whose lobbying activities are confined only to executive officials shall be required to file interim periodic reports semiannually on January 31 and July 31, which reports need to be signed by the lobbyist and the lobbyist's employer or employers.

(2) Each annual, semiannual and monthly periodic report shall contain:

(a) The total of all expenditures made or incurred on behalf of such lobbyist by the lobbyist's employer or employers, not including payments made directly to the lobbyist, during the period covered by the report. The totals shall be segregated according to financial category including, but not limited to: entertainment, food and refreshment, honoraria, travel, lodging, advertising and other like expenditures. Reimbursed personal living and travel expenses of a lobbyist made or incurred directly or indirectly for any lobbying purpose need not be reported.

(b) The name of any legislator or executive official to whom or for whose benefit on any one (1) occasion, an expenditure in excess of: (i) seventy-five dollars (\$75.00) per person from 2008 through December 31, 2010, and (ii) in excess of one hundred dollars (\$100) per person on and after January 1, 2011, for the purpose of lobbying, is made or incurred and the date, name of payee, purpose and amount of such expenditure. Expenditures for the benefit of the members of the household of a legislator or executive official shall also be itemized if such expenditure exceeds the amount listed in this subsection.

(c) In the case of a lobbyist employed by more than one (1) employer, the proportionate amount of such expenditures in each category made or incurred on behalf of each of his employers.

(d) The subject matter of proposed legislation and the number of each senate or house bill, resolution, memorial or other legislative activity or any rule, ratemaking decision, procurement, contract, bid or bid process, financial services agreement or bond in which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriations bills, the lobbyist shall enumerate the specific section or sections which he supported or opposed.

(e) The itemization threshold in subsection (2)(b) of this section shall be adjusted biennially by directive of the secretary of state, using consumer price index data compiled by the United States department of labor.

(3) Reports provided by this section to be filed under the provisions of this section may be filed by means of an electronic facsimile transmission machine and may be filed by other electronic means as approved by the secretary of state.

History.

I.C., § 67-6619, as added by 2008, ch. 306,
§ 3, p. 850; am. 2010, ch. 22, § 2, p. 38.

STATUTORY NOTES

Prior Laws.

Former § 67-6619, which comprised Init. Measure 1974, No. 1, § 19; am. 1976, ch. 363, § 1, p. 1196; am. 1978, ch. 146, § 1, p. 327; am. 1983, ch. 105, § 1, p. 225; am. 1983, ch. 208, § 1, p. 561; am. 1999, ch. 176, § 3, p. 476; am. 2006, ch. 106, § 4, p. 294, was repealed by S.L. 2008, ch. 306, § 2.

Amendments.

The 2010 amendment, by ch. 22, added subsection (3).

Effective Dates.

Section 4 of S.L. 2010, ch. 22 declared an emergency. Approved February 26, 2010.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state and municipal enactments reg-

ulating lobbying and of lobbying contracts. 35 A.L.R.6th 1.

67-6623. Duties of secretary of state. — The secretary of state is charged with enforcement of the provisions of this act, and in addition to duties otherwise prescribed herein, it shall be his duty:

(a) To prescribe forms for statements and other information required to be filed by this act, and to furnish such forms and instruction manual to persons required to file such statements and information;

(b) To make statements and other information filed with him available for public inspection and copying during regular office hours, and to make copying facilities available at a charge not to exceed actual cost;

(c) To preserve such statements and other information for a period of four (4) years from date of receipt;

(d) To make investigations with respect to statements filed under the provisions of this act, and with respect to alleged failures to file any statement required under the provisions of this act, and upon complaint by any person with respect to alleged violations of any part of this act;

(e) To report suspected violations of law to the appropriate law enforcement authorities;

(f) To prescribe and publish rules in accordance with the provisions of chapter 52, title 67, Idaho Code, and to take such other actions as may be appropriate to carry out the provisions of this act;

(g) To prescribe methods of the filing of reports by electronic means.

History.

Init. Measure 1974, No. 1, § 23; am. 1977,

ch. 180, § 5, p. 502; am. 2010, ch. 22, § 3, p. 38.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 22, in subsection (f), deleted “and regulations” after “publish rules”; and added subsection (g).

Effective Dates.

Section 4 of S.L. 2010, ch. 22 declared an emergency. Approved February 26, 2010.

CHAPTER 69

FOOD SERVICE FACILITIES

SECTION.

67-6901. Statement of public policy.

67-6902. Definitions.

SECTION.

67-6903. Food service facilities in public buildings.

67-6901. Statement of public policy. — It is the policy of this state to encourage and enable people with disabilities to participate fully in the social and economic life of the state and to engage in remunerative employment.

History.

I.C., § 67-6901, as added by 1982, ch. 350,
§ 1, p. 866; am. 2010, ch. 235, § 64, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substi-

tuted "people with disabilities" for "the physically and mentally handicapped."

67-6902. Definitions. — As used in this chapter:

(1) "Disabled" or "person with disability" means:

(a) A person who has a physical or mental impairment which substantially limits one (1) or more major life activities (e.g., communication, ambulation, self-care, socialization, education, vocational training, transportation or employment);

(b) A person who has a record of such an impairment and the impairment is expected to continue indefinitely;

(c) A person who is regarded or treated by others as having such an impairment;

(d) Persons including, but not limited to, persons who are blind, deaf or who have epilepsy, autism, intellectual disabilities or mental illness or who have orthopedic disorders or cerebral palsy.

(2) "Food service facilities" includes restaurants, cafeterias, snack bars, and goods and services customarily offered in connection with any of the foregoing, and also includes vending machines dispensing foods when operated independently or in conjunction with such facilities.

(3) "Nonprofit organization representing persons with disabilities" means tax exempt organizations as defined under section 501(c)(3) of the Internal Revenue Code and includes the Idaho commission for the blind and visually impaired.

(4) "Public buildings" means all county courthouses, and all city halls and buildings used primarily as governmental offices of the state or any county or city. It does not include public schools or buildings or institutions of higher education or professional-technical training, buildings of the department of health and welfare, facilities of the state board of correction or the state capitol building.

History.

I.C., § 67-6902, as added by 1982, ch. 350, § 1, p. 866; am. 1994, ch. 159, § 8, p. 359; am.

1999, ch. 329, § 40, p. 852; am. 2009, ch. 283, § 1, p. 851; am. 2010, ch. 235, § 65, p. 542.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 283, in subsection (1), deleted “the state capitol” following “means” and added “or the state capitol building” at the end.

The 2010 amendment, by ch. 235, alphabetized the defined terms, substituting “‘Disabled’ or ‘person with disability’ means” in subsection (1) and “persons with disabilities” for “the handicapped” in subsection (3).

Federal References.

Section 501(c)(3) of the internal revenue code, referred to in subdivision (3), is compiled as 26 U.S.C.S. § 501(c)(3).

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

67-6903. Food service facilities in public buildings. — Any governmental agency which proposes to allow, to operate or to continue a food service facility in a public building shall first attempt, in good faith, to notify nonprofit organizations representing persons with disabilities of the opportunity to operate a food service. If more than one (1) organization responds, the governmental agency shall establish reasonable criteria and shall select on the basis of that criteria from the proposals submitted. Criteria adopted by a governmental agency pursuant to this section, and used as a basis for selection among proposals submitted, shall include the requirement that proposals submitted by the Idaho commission for the blind and visually impaired shall have priority over all other proposals submitted. Proposals submitted by nonprofit organizations representing persons with disabilities, other than the Idaho commission for the blind and visually impaired, shall receive priority over all other proposals except proposals submitted by the Idaho commission for the blind and visually impaired. A food service facility shall be operated without payment of rent. The governmental agency shall not offer or grant any other party a contract or concession to operate such food service facility unless the governmental agency determines in good faith that no nonprofit organization representing persons with disabilities is willing or able to provide satisfactory food service.

History.

I.C., § 67-6903, as added by 1982, ch. 350,

§ 1, p. 866; am. 1994, ch. 159, § 9, p. 359; am. 2010, ch. 235, § 66, p. 542.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 235, in the first and last sentence, substituted “representing persons with disabilities” for “representing handicapped persons”; and in the

fourth sentence, substituted “persons with disabilities” for “the handicapped.”

CHAPTER 70

IDAHO SAFE BOATING ACT

SECTION.

67-7008. Certificate of registration — Expiration — Fees.

67-7008A. Additional fees — Deposit into invasive species fund.

SECTION.

67-7024. Water skiing.

67-7027. Collisions, accidents and casualties — Reports.

67-7008. Certificate of registration — Expiration — Fees. —

(1) Within fifteen (15) days after purchase, or as otherwise herein provided, the owner of each vessel requiring numbering by the state of Idaho shall file an application for registration with an assessor or authorized vendor on forms provided by the department. The application shall be signed by the owner and shall be accompanied by the fee herein designated. Upon receipt of an application in approved form, and the appropriate fee, the assessor or authorized vendor shall enter the same upon the records of its office and issue to the applicant two (2) validation stickers and a certificate of registration stating the number issued to the vessel, the receipt of any fee paid and the name and address of the owner, and the assessor or authorized vendor shall forward to the department a duplicate copy. The owner shall paint on or permanently attach to each side of the bow of the vessel the registration number and validation sticker in a manner as may be prescribed by rules of the department in order that they may be completely visible, and the number shall be maintained in legible condition. The certificate of registration shall be pocket-size and shall be on board and available at all times for inspection on the vessel for which issued whenever that vessel is in operation, except that livery operators may have the rental agreement on board rented vessels in lieu of the certificate of registration.

(2) The owner of any vessel for which a current certificate of registration has been issued pursuant to any federal law or a federally approved numbering system of another state shall, if the vessel is operated on the waters of this state in excess of sixty (60) days, make application for a certificate of Idaho registration in the manner prescribed in this section.

(3) Each assessor and authorized vendor shall record, on a form provided by the department, the names of all owners of vessels who make application for certificates of registration, together with the amount of the fees paid by the owners. He shall, on or before the tenth of each month, forward to the department a duplicate copy of each record for the preceding month.

(4) All records of the department made or kept pursuant to this section shall be kept current and shall be public records.

(5) Every certificate of registration issued shall continue in full force and effect through December 31 of the year of issue unless sooner terminated or discontinued in accordance with law. Certificates of registration may be renewed by the owner in the same manner provided for in the initial securing of them.

(6) The owner of any vessel shall notify the department within fifteen (15) days if his vessel is destroyed or abandoned, or is sold or transferred either wholly or in part to another person or persons or if the owner's address no

longer conforms to the address appearing on the certificate of registration. In all such cases, the notice shall be accompanied by a surrender of the certificate of registration. When the surrender of the certificate is by reason of the vessel being destroyed, abandoned or sold, the department shall cancel the certificate and enter that fact in its records. If the surrender is by reason of a change of address on the part of the owner, the new address shall be endorsed on the certificate and the certificate returned to the owner.

(7) Whenever the ownership of a vessel changes, the purchaser shall, within fifteen (15) days after acquisition, make application to the department for transfer to him of the certificate of registration issued for the vessel, giving his name, address, and the number of the vessel and shall, at the same time, pay to the department a transfer fee of three dollars (\$3.00). Upon receipt of the application and fee, the department shall transfer the certificate of registration issued for the vessel to the new owner or owners. Unless the application is made and the fee paid within fifteen (15) days, the vessel shall be considered to be without a certificate of registration.

(8) No number other than the registration number issued to a vessel or granted by reciprocity pursuant to law shall be painted, attached, or otherwise displayed on either side of the bow of the vessel.

(9) If any certificate of registration becomes lost, mutilated, or becomes illegible, the owner of the vessel for which the same was issued shall obtain a duplicate of the certificate from the department upon application and the payment of a fee of three dollars (\$3.00). If one or both validation stickers are lost, stolen, or destroyed, any sticker remnants and the certificate of registration should be returned to the department along with a three dollar (\$3.00) fee and an application for a duplicate certificate of registration and validation stickers.

(10) A person engaged in the manufacture or sale of vessels of a type otherwise required to be numbered by law, may obtain pursuant to regulations duly promulgated by the department, certificates of registration for use in the testing or demonstration only of a vessel upon payment of thirteen dollars (\$13.00) for each certificate. Certificates of registration so issued may be used by the applicant in the testing or demonstration only of vessels by temporary placement of the numbers assigned by the certificates on the vessel tested or demonstrated, and shall be issued and displayed as otherwise prescribed by this chapter or by regulation of the department.

(11) The registration fees shall be:

- | | |
|--|---------|
| (a) Vessels 0-12 feet in length | \$20.00 |
| Vessels over 12 feet in length | 20.00 |
| plus \$2.00 per foot for each additional foot
in excess of 12 feet. | |

(b) The registration fees for new or used vessels which have not previously been registered in Idaho shall be:

- (i) For vessels acquired or brought into the state January 1 through March 31, the full amount of the regular fees;
- (ii) For vessels acquired or brought into the state April 1 through June 30, seventy-five percent (75%) of the regular fees;
- (iii) For vessels acquired or brought into the state July 1 through September 30, fifty percent (50%) of the regular fees;

(iv) For vessels acquired or brought into the state after September 30, twenty-five percent (25%) of the regular fees.

(c) Each assessor and authorized vendor shall presume that any vessel is subject to the regular certificate of registration fees, unless the applicant can successfully show reasonable proof that the vessel has not previously been registered in Idaho.

(12) The provisions of subsection (11) of this section, with respect to the amount of payment of registration fees shall not apply to vessels owned by any charitable or religious organization, scout organization or any similar organization not used and operated for profit. All vessels currently registered by the state of Idaho and having paid the fees imposed by subsection (11) of this section shall not be assessed and taxed as personal property in the state of Idaho.

(13) The registration fee for vessels owned by any charitable or religious organization, scout organization or similar organization not used and operated for profit shall be two dollars (\$2.00) per year.

History.

I.C., § 67-7008, as added by 1986, ch. 207, § 2, p. 515; am. 1994, ch. 65, § 3, p. 128; am. 2007, ch. 240, § 1, p. 710.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 240, increased the fee amounts in subsection (11)(a) from \$13.00 to \$20.00.

67-7008A. Additional fees — Deposit into invasive species fund.

— (1) In addition to any other moneys or fees collected pursuant to the provisions of section 67-7008, Idaho Code, or any other provision of chapter 70, title 67, Idaho Code, all vessels shall pay an additional fee each calendar year as follows:

(a) Motorized vessels and sailboats:

(i) Ten dollars (\$10.00) per vessel registered in the state of Idaho prior to launch into the public waters of the state;

(ii) Twenty-two dollars (\$22.00) per vessel documented through the United States coast guard or registered outside the state of Idaho prior to launch into the public waters of the state.

(b) Nonmotorized vessels: Seven dollars (\$7.00) per vessel prior to launch into the public waters of the state.

(c) Licensed outfitters, as defined in section 36-2102(b), Idaho Code, with nonmotorized fleets exceeding five (5) vessels shall be afforded a prorated group rate of thirty-two dollars (\$32.00) for six (6) to ten (10) vessels; fifty-seven dollars (\$57.00) for eleven (11) to twenty (20) vessels; and one hundred two dollars (\$102) for twenty-one (21) or more vessels up to a maximum of one hundred (100) vessels. The fee for any additional vessels shall be one dollar (\$1.00) per vessel. The licensed outfitter group rates shall also be available for groups exempt from licensing pursuant to section 36-2103, Idaho Code.

(2) Upon payment of the fee as provided in this section, the payor shall be issued a protection against invasive species sticker that shall be displayed on the vessel in a manner as prescribed by the rules of the department.

Stickers shall be considered in full force and effect through December 31 of the year of issue.

(3) Fees shall be collected by the department or authorized vendor.

(a) Vendors may retain one dollar and fifty cents (\$1.50) of fees collected pursuant to this section except those collected pursuant to subsection (1)(a)(i) of this section.

(b) The department shall retain up to twenty percent (20%) of the fees for the actual costs of administering the sticker program.

(c) All remaining fees collected pursuant to this section shall be deposited in the invasive species fund established in section 22-1911, Idaho Code.

(d) For the purpose of this section, "vessel" is defined in section 67-7003(22), Idaho Code. All vessels are subject to the provisions of this section, with the exception of small rafts and other inflatable vessels less than ten (10) feet in length.

(4) If the protection against invasive species sticker is lost, stolen or destroyed, any sticker remnants shall be returned to the department along with a three dollar (\$3.00) fee for a duplicate sticker.

(5) A person engaged in the manufacture or sale of vessels may obtain a sticker to be used in the testing or demonstration only of vessels by temporary placement of the protection against invasive species sticker on the vessel tested or demonstrated.

History.

I.C., § 67-7008A, as added by 2009, ch. 137,
§ 1, p. 419; am. 2010, ch. 120, § 1, p. 267.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 120, in the introductory language in paragraph (1)(a), added "and sailboats"; in paragraph (1)(a)(ii), substituted "Twenty-two dollars (\$22.00)" for "Twenty dollars (\$20.00)," and inserted "documented through the United States coast guard or"; in paragraph (1)(b), substituted "Seven dollars (\$7.00)" for "Five dollars (\$5.00)"; in paragraph (1)(c), in the first sentence, substituted "Licensed outfitters" for "Commercial outfitters," inserted "as defined in section 36-2102(b), Idaho Code," substituted "thirty-two dollars (\$32.00)" and "fifty-seven dollars (\$57.00)" for "thirty dollars

(\$30.00)" and "fifty-five dollars (\$55.00)" respectively, and "one hundred two dollars (\$102.00)" for "one hundred dollars (\$100)," added "up to a maximum of one hundred (100) vessels", and added the last two sentences; added paragraphs (3)(a) and (3)(b) and made related redesignations; in paragraph (3)(c), added "All remaining"; and added subsections (4) and (5).

Effective Dates.

Section 2 of S.L. 2009, ch. 137 declared an emergency. Approved April 8, 2009.

Section 2 of S.L. 2010, ch. 120 declared an emergency. Approved March 25, 2010.

67-7024. Water skiing. — (1) It shall be unlawful for the operator of any vessel having in tow or otherwise assisting a person on water skis, aquaplane or similar contrivance to operate or propel the same upon or above any waters of the state of Idaho unless that vessel shall be occupied by at least one (1) other competent person who shall act as an observer. This subsection shall not apply to vessels used by representatives of duly constituted water ski schools in the giving of instruction, or to vessels used in duly authorized water ski tournaments, competitions, expositions or trials.

(2) Vessels operating within a regulation legal and permitted slalom course and that are equipped with a rear view wide angle mirror are exempt from the requirement of having at least one (1) other competent person in the boat acting as an observer as provided in subsection (1) of this section. The size of the mirror must be no less than four (4) inches from bottom to top and across from side to side. It shall be mounted firmly to give the operator a full, complete view beyond the rear of the vessel at all times.

(3) No vessel shall have in tow or shall otherwise be assisting a person on water skis, aquaplane or similar contrivance from the period of one (1) hour after sunset to one (1) hour prior to sunrise. This subsection shall not apply to vessels used in duly authorized water ski tournaments, competitions, expositions or trials.

(4) All vessels having in tow or otherwise assisting a person on water skis, aquaplane or similar contrivance shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person or create excessive wake.

(5) No person shall operate or manipulate any vessel's attached towrope or other device by which the direction or location of water skis, aquaplane or similar device may be affected or controlled in such a way as to cause the same or any person thereon to collide with or strike against any person or object other than a jumping ramp or in conjunction with skiing over a slalom course.

History.

I.C., § 67-7024, as added by 1986, ch. 207,
§ 2, p. 515; am. 2011, ch. 114, § 1, p. 313.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 114, in subsection (1), substituted "This subsection" for "This section" in the last sentence; added

subsection (2); and redesignated former subsections (2), (3), and (4), as present subsections (3), (4), and (5), respectively.

67-7027. Collisions, accidents and casualties — Reports. — (1) It shall be unlawful for the operator of any vessel on the water of this state to fail to report any accident or casualty occasioned by the operation of a vessel and as herein provided.

(2) It shall be the duty of the operator of any vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew, passengers and guests to render aid to other persons affected by the collision, accident or other casualty and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(3) It shall be the duty of the operator of any vessel involved in a collision, accident or other casualty resulting in death or injury to a person or damage to property in excess of one thousand five hundred dollars (\$1,500):

(a) To immediately, by the quickest means of communication, give notice

of the accident to the sheriff of the county in which the accident occurred; and

(b) To file with the sheriff of the county in which the accident occurred, a boating accident report within forty-eight (48) hours of the occurrence if a person dies within twenty-four (24) hours of the occurrence, or in the case of an incapacitating injury or if a person disappears from the vessel. A report shall be filed within ten (10) days of the occurrence or death if an earlier report is not required by this paragraph. The report shall be made on forms provided by the department, but shall not be referred to in any way as evidence in any judicial proceeding. A copy of such report shall also be readily transmitted by the sheriff to the designated state boating safety coordinator.

(4) If the operator of the vessel involved in a collision, accident, or other casualty is incapacitated, and there is another person in the vessel at the time of the accident capable of giving immediate notice of an accident as required herein, the person shall give or cause to be given the notice not given by the operator.

(5) If the operator of the vessel involved in a collision, accident, or other casualty is incapacitated, the investigating law enforcement officer shall file the required form as prescribed by the director.

History.

I.C., § 67-7027, as added by 1986, ch. 207, § 2, p. 515; am. 1990, ch. 75, § 1, p. 158; am.

1996, ch. 54, § 6, p. 160; am. 2010, ch. 71, § 1, p. 119.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 71, substituted "one thousand five hundred dollars

(\$1,500)" for "five hundred dollars (\$500)" in the introductory paragraph in subsection (3).

67-7034. Persons under the influence of alcohol, drugs or any other intoxicating substances.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statutes prohibiting boating while

intoxicated, boating while under the influence, or the like. 47 A.L.R.6th 107.

67-7035. Aggravated operating while under the influence of alcohol, drugs or any other intoxicating substances.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statutes prohibiting boating while

intoxicated, boating while under the influence, or the like. 47 A.L.R.6th 107.

67-7039. Vessel Titling Act.

JUDICIAL DECISIONS

ANALYSIS

Acquisition of title.
Bankruptcy.

Acquisition of Title.

No party acquires an ownership interest in a titled boat until a certificate of title is issued by the state naming that party as the owner, even where the former owner had endorsed the original certificate of title over to the new owner and the new owner had taken possession of the vessel. *Mayer v. Froerer Farms, Inc.* (In re Mayer), 2010 Bankr. LEXIS 2400 (Bankr. D. Idaho July 19, 2010).

Bankruptcy.

Although a debtor's name was removed from a boat's title for no consideration at a time when he was insolvent, summary judgment was not granted in favor of a trustee in his action to avoid the transfer under 11 U.S.C.S. § 548(a)(1)(B), as there was a question of material fact concerning the value of the debtor's interest that was transferred to

the co-owner. The fact that, under § 49-503 and subsection (3) of this section, the debtor had the authority to sell the boat while his name was on the title, and gave up that right when his name was removed from the title, required valuing the interest he transferred, and any gain he realized from the transfer in the form of decreased liability for such items, as maintenance and upkeep. *Gugino v. Ortega* (In re Pierce), 428 B.R. 524 (Bankr. D. Idaho 2010).

When the state issued a new certificate of title pursuant to § 49-503 and subsection (3) of this section, changing the ownership of a boat from a debtor and his co-owner to just the co-owner, a transfer occurred for purposes of 11 U.S.C.S. §§ 101(54)(D) and 548(d)(1). *Gugino v. Ortega* (In re Pierce), 428 B.R. 524 (Bankr. D. Idaho 2010).

CHAPTER 71

RECREATIONAL ACTIVITIES

SECTION.

67-7101. Definitions.

67-7103. Application for number — Attachment of number — Certificate — Application for transfer of certificate — Transfer of certificate fee — Temporary number — Fees.

67-7104. Nonresident snowmobile user certificate required.

67-7105. Government ownership.

67-7106. Distribution of moneys collected — County snowmobile fund — State snowmobile fund — State snowmobile search and rescue fund.

SECTION.

67-7112. Groomed snowmobile trails.

67-7114. Operation under the influence of alcohol, drugs or any other intoxicating substance.

67-7119. Cross-country skiing advisory committees. [Repealed.]

67-7122. Requirements — Registration — Procedure.

67-7123. Transfer of registration sticker and restricted vehicle license plate.

67-7124. Nonresident — Exemption.

67-7126. Establishment of account — Distribution of fees.

67-7101. Definitions. — In this chapter:

(1) "All-terrain vehicle" or "ATV" means any recreation vehicle with three (3) or more tires and fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, has handlebar steering and a seat designed to be straddled by the operator.

(2) "Board" means the park and recreation board created under authority of section 67-4221, Idaho Code.

(3) "Bona fide snowmobile program" means services or facilities as approved by the department that will benefit snowmobilers such as snow-

mobile trail grooming, plowing and maintaining snowmobile parking areas and facilities, and trail signing.

(4) "Dealer" means any person who engages in the retail sales of or rental of snowmobiles, motorbikes, utility type vehicles or all-terrain vehicles.

(5) "Department" means the Idaho department of parks and recreation.

(6) "Designated parking area" means an area located, constructed, maintained, and signed with the approval of the land manager or owner.

(7) "Director" means the director of the department of parks and recreation.

(8) "Highway." (See section 40-109, Idaho Code, but excepting public roadway as defined in this section)

(9) "Motorbike" means any self-propelled two (2) wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trials bikes, motocross bikes or dual purpose motorcycles.

(10) "Off-highway vehicle" means an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in this section.

(11) "Operator" means any person who is in physical control of a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile.

(12) "Owner" means every person holding record title to a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile and entitled to the use or possession thereof, other than a lienholder or other person having a security interest only.

(13) "Person" means an individual, partnership, association, corporation, or any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(14) "Public roadway" means all portions of any highway which are controlled by an authority other than the Idaho transportation department.

(15) "Snowmobile" means any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight, designed primarily for travel on snow or ice or over natural terrain, which may be steered by tracks, skis, or runners.

(16) "Specialty off-highway vehicle" means any vehicle manufactured, designed or constructed exclusively for off-highway operation that does not fit the definition of an all-terrain vehicle, utility type vehicle or motorbike as defined in this section. The vehicle classification provided for in this subsection shall become effective on January 1, 2010.

(17) "Utility type vehicle" or "UTV" means any recreational motor vehicle other than an ATV, motorbike or snowmobile as defined in this section, designed for and capable of travel over designated roads, traveling on four (4) or more tires, maximum width less than seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds, and having a wheelbase of one hundred ten (110) inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in section

49-110(2), Idaho Code, or vehicles otherwise registered under title 49, Idaho Code. A "utility type vehicle" or "UTV" also means a recreational off-highway vehicle or ROV.

(18) "Vendor" means any entity authorized by the department to sell recreational registrations.

(19) "Winter recreational parking locations" means designated parking areas established and maintained with funds acquired from the cross-country skiing account.

History.

1969, ch. 338, § 3, p. 1061; am. 1982, ch. 95, § 118, p. 185; 1983, ch. 239, § 1, p. 644; am. 1986, ch. 323, § 1, p. 790; am. and redesign. 1988, ch. 265, § 532, p. 549; am. 1989, ch. 106, § 1, p. 238; am. 1990, ch. 391, § 4, p.

1092; am. 2003, ch. 87, § 3, p. 265; am. 2006, ch. 42, § 1, p. 122; am. 2007, ch. 117, § 1, p. 361; am. 2008, ch. 409, § 10, p. 1136; am. 2009, ch. 157, § 11, p. 458; am. 2011, ch. 158, § 3, p. 443.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 117, deleted "and which is not otherwise registered or licensed under the laws of the state of Idaho" from the end of subsection (14).

The 2008 amendment, by ch. 409, in subsection (1), substituted "nine hundred (900) pounds and fifty (50) inches" for "eight hundred fifty (850) pounds and forty-eight (48) inches" and added "has handlebar steering and a seat designed to be straddled by the operator."

The 2009 amendment, by ch. 157, in subsection (1), deleted "traveling on low pressure

tiers of ten (10) psi or less" preceding "has handlebar steering"; in subsection (4), inserted "utility type vehicles"; added subsections (10) and (16) and redesignated the other subsections accordingly; in subsections (11) and (12), inserted "utility type vehicle, specialty off-highway vehicle"; and rewrote present subsection (17), adding the second sentence.

The 2011 amendment, by ch. 158, added the last sentence in subsection (17).

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

67-7103. Application for number — Attachment of number — Certificate — Application for transfer of certificate — Transfer of certificate fee — Temporary number — Fees. — (1) On or before November 1 of each year the owner of each snowmobile requiring numbering by the state of Idaho shall file an application for number with the department on forms approved by it. The application shall be signed by the owner and shall, except as provided in subsection (7) of this section, be accompanied by a fee of thirty-one dollars (\$31.00). Upon receipt of the application the department shall issue to the applicant a certificate of number stating the number assigned to the snowmobile and the name and address of the owner. The owner shall attach to the snowmobile the identification number in a manner as may be prescribed by rules of the department. The number shall be located on the right and left side of the cowl of the snowmobile and shall be completely visible and shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the snowmobile for which issued, wherever the snowmobile is in operation.

(2) The department may issue any certificate of number directly or may authorize any persons to act as vendor for the issuance. In the event a person accepts the authorization, he may be assigned a block of numbers

and certificates which upon issue, in conformity with this chapter and with any rules of the department, shall be valid as if issued directly by the department.

(3) All records of the department made or kept pursuant to this section shall be public records.

(4) Each snowmobile must be registered before it leaves the premises at the time of sale from any retail snowmobile dealer.

(5) The purchaser of a snowmobile shall, within fifteen (15) days immediately after acquisition, make application to the department for transfer to him of the certificate of number issued to the snowmobile, giving his name, address and the number of the snowmobile and shall at the same time pay to the department a fee of three dollars (\$3.00). Upon receipt of the application and fee, the department shall transfer the certificate of number issued for the snowmobile to the new owner or owners. Unless the application is made and fee paid within fifteen (15) days, the snowmobile shall be considered to be without a certificate of number and it shall be unlawful for any person to operate that snowmobile until the certificate is issued.

(6) No number other than the number issued to a snowmobile pursuant to this chapter shall be painted, attached, or otherwise displayed on the snowmobile, except a temporary number may be attached to identify a snowmobile for the purpose of racing or other sporting events.

(7) Resident and nonresident owners of snowmobiles used for rental purposes shall purchase certificates of number for sixty-one dollars (\$61.00) and the certificates of number shall be displayed on the machine at all times.

History.

1969, ch. 338, § 5, p. 1061; am. 1986, ch. 323, § 2, p. 790; am. and redesis. 1988, ch. 265, § 543, p. 549; am. 1989, ch. 106, § 2, p.

238; am. 1992, ch. 178, § 1, p. 562; am. 1998, ch. 343, § 1, p. 1093; am. 2003, ch. 258, § 1, p. 680; am. 2005, ch. 141, § 2, p. 434; am. 2007, ch. 117, § 2, p. 361.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 117, in the second sentence in subsection (1), substituted "thirty-one dollars (\$31.00)" for "twenty-one

dollars (\$21.00)"; and in subsection (7), substituted "sixty-one dollars (\$61.00)" for "fifty-one dollars (\$51.00)."

67-7104. Nonresident snowmobile user certificate required. — The owner of a nonresident, noncommercial snowmobile shall not be required to comply with the registration requirements of the state of Idaho, but shall be required to obtain a nonresident snowmobile user certificate. A fee of thirty-one dollars (\$31.00) shall be imposed for the issuance of a nonresident snowmobile user certificate. The certificate of number shall be displayed in the same manner as provided in section 67-7103, Idaho Code. Such certificates shall be valid beginning November 1 through October 31 of the following year. Issuance and administration of nonresident snowmobile user certificates shall be conducted in the same manner as provided in section 67-7103, Idaho Code, for numbering of snowmobiles.

(1) For purposes of this section, “nonresident” shall be as defined in section 36-202, Idaho Code.

(2) In the absence of a bona fide program in the area or upon the request of the bona fide county snowmobile advisory committee of the nearest affected county in Idaho, the requirements for the nonresident certificate may be waived by the parks and recreation board on specific trails where the snowmobile trail grooming is solely supported by a state other than Idaho.

History.

1969, ch. 338, § 6, p. 1061; am. and redesign. 1988, ch. 265, § 535, p. 549; am. 1998, ch. 342, § 1, p. 1093; am. 1999, ch. 368, § 1, p.

974; am. 2003, ch. 258, § 2, p. 680; am. 2005, ch. 141, § 3, p. 434; am. 2007, ch. 117, § 3, p. 361.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 117, substituted “thirty-one dollars (\$31.00)” for “twenty-

ty-one dollars (\$21.00)” in the introductory paragraph.

67-7105. Government ownership. — Certificate of number and registration portions of this chapter shall not apply to snowmobiles, all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes owned and operated by the federal government, a state government or a subdivision of it.

History.

1969, ch. 338, § 7, p. 1061; am. and redesign.

1988, ch. 265, § 536, p. 549; am. 2009, ch. 157, § 12, p. 458.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 157, inserted “all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes.”

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

67-7106. Distribution of moneys collected — County snowmobile fund — State snowmobile fund — State snowmobile search and rescue fund. — (1) Each vendor shall not later than the fifteenth day of each month remit all moneys collected under the provisions of sections 67-7103 and 67-7104, Idaho Code, to the state treasurer for credit to the state snowmobile fund, established in the dedicated fund, to be administered by the director, except that one dollar (\$1.00) from each snowmobile certificate of number fee, one dollar (\$1.00) from each rental certificate of number fee, and one dollar (\$1.00) from each nonresident snowmobile user certificate issued by the vendor shall be credited by the state treasurer to the state snowmobile search and rescue fund created in section 67-2913A, Idaho Code.

(2) Each county with a bona fide snowmobile program shall be entitled to receive from the department eighty-five percent (85%) of the moneys generated for that county during that registration period. Counties with a bona fide snowmobile program may use up to fifteen percent (15%) of their

county snowmobile moneys upon recommendation by their county snowmobile advisory committee for snowmobile law enforcement purposes.

(3) Up to fifteen percent (15%) of the revenue generated from snowmobile registrations each year may be used by the department to defray administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the state snowmobile fund.

(4) Vendors shall be entitled to charge an additional one dollar and fifty cents (\$1.50) handling fee per registration for the distribution of certificates of number. Handling fees collected by the department shall be deposited to the state snowmobile fund.

(5) For those registrations not designated to a bona fide county snowmobile program, the moneys generated shall be deposited to the state snowmobile fund, and such fund shall be available to the department for snowmobile-related expenses.

History.

I.C., § 49-2608, as added by 1983, ch. 239, § 3, p. 644; am. 1986, ch. 323, § 3, p. 790; am. and redesisg. 1988, ch. 265, § 537, p. 549; am.

1989, ch. 106, § 3, p. 238; am. 1992, ch. 178, § 2, p. 562; am. 2005, ch. 141, § 4, p. 434; am. 2007, ch. 117, § 4, p. 361.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 117, deleted the former second and third sentences in subsection (2), which read: "Application for additional funds shall be made to the department by each county prior to the second Monday of August of each year. The moneys applied for shall be used solely for a bona fide snowmobile program"; in subsection (3), substituted "revenue generated from snowmobile registrations each year" for "statewide snowmobile fund generated each year"; added the

last sentence in subsection (4); and rewrote subsection (5), which formerly read: "Counties which have not established a bona fide snowmobile program shall remit the entire balance in the county snowmobile fund to the state treasurer for credit to the state snowmobile fund, and shall be available to counties with a bona fide snowmobile program. Application for these moneys shall be made prior to the second Monday of August of that registration period."

67-7112. Groomed snowmobile trails. — Any all-terrain vehicle operating on groomed snowmobile trails during the winter snowmobiling season when the trails are groomed shall be registered as a snowmobile under the provisions of section 67-7103, Idaho Code. Counties shall have the option to allow all-terrain vehicles, if registered, to use snowmobile trails in the county. No other vehicles shall operate on groomed snowmobile trails unless specifically allowed by the county. Violation of the provisions of this section shall be an infraction.

History.

I.C., § 49-2616, as added by 1986, ch. 323, § 5, p. 790; am. and redesisg. 1988, ch. 265,

§ 543, p. 549; am. 1989, ch. 106, § 4, p. 238; am. 2009, ch. 138, § 1, p. 420.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 138, added the last two sentences.

67-7114. Operation under the influence of alcohol, drugs or any other intoxicating substance. — Any person driving or operating a snowmobile, motorbike, utility type vehicle, specialty off-highway vehicle or all-terrain vehicle under the influence of alcohol, drugs or any other intoxicating substance on a public roadway or highway or off-highway shall be guilty of a misdemeanor.

History.

I.C., § 67-7114, as added by 1999, ch. 359, § 2, p. 950; am. 2008, ch. 409, § 11, p. 1137; am. 2009, ch. 157, § 13, p. 458.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-317.

Amendments.

The 2008 amendment, by ch. 409, inserted “motorbike, utility type vehicle” and “or in section 49-426(3) and (4), Idaho Code.”

The 2009 amendment, by ch. 157, inserted

“specialty off-highway vehicle,” deleted “as authorized in this chapter or in section 49-426(3) and (4), Idaho Code” following “public roadway or highway,” and substituted “off-highway” for “off-road” near the end.

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

67-7119. Cross-country skiing advisory committees. [Repealed.]

Repealed by S.L. 2013, ch. 29, § 1, effective July 1, 2013.

History.

I.C., § 49-3108, as added by 1979, ch. 103, § 1, p. 247; am. and redesign. 1988, ch. 265, § 548, p. 549; am. 1989, ch. 106, § 9, p. 238.

67-7122. Requirements — Registration — Procedure. — (1) On or before January 1 of each year, the owner of any all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in section 67-7101, Idaho Code, or any motorcycle as defined in section 49-114, Idaho Code, used off public highways, on highways located on state lands or federal lands which are not part of the highway system of the state of Idaho or on highways as prescribed in section 49-426(3) and (4), Idaho Code, but excluding those vehicles used exclusively on private land for agricultural use or used exclusively for snow removal purposes as provided in section 49-426(2), Idaho Code, shall register that vehicle at any vendor authorized by the department. Effective January 1, 2010, a fee of twelve dollars (\$12.00) shall be charged for each registration, which fee includes a one dollar and fifty cent (\$1.50) fee to be retained by the vendor and the remainder of which shall be remitted to the department together with a duplicate copy of the application form, noting the number of the registration sticker issued.

(2) At the time of sale from any dealer, each motorbike, all-terrain vehicle or utility type vehicle sold to an Idaho resident, but excluding those vehicles to be used exclusively on private land for agricultural use or used exclusively for snow removal purposes as provided in section 49-426(2), Idaho Code, must be registered.

(a) Application blanks and registration stickers shall be supplied by the department and the registration sticker shall be issued to the person making application for registration.

(b) All registration stickers which are issued shall be in force through December 31 of the issued year. All registration stickers shall be renewed by the owner of the all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle in the same manner provided for in the initial securing of the same or with any vendor authorized by the department. A vendor issuing a renewal registration sticker shall retain a one dollar and fifty cent (\$1.50) vendor fee and remit the remainder of the twelve dollar (\$12.00) renewal registration sticker fee to the department together with a duplicate copy of the application form, noting the number of the registration sticker issued.

(c) The issued registration sticker shall be placed upon the restricted vehicle license plate of the all-terrain vehicle, motorbike or utility type vehicle, or upon the right fork of a vehicle registered pursuant to section 49-402(3), Idaho Code, or of a motorbike if used exclusively off-highway, or upon the rear fender of an all-terrain vehicle, specialty off-highway vehicle or utility type vehicle if used exclusively off-highway. The placement shall be made in such a manner that it is completely visible, does not cover the license plate numbers or letters, if licensed, and shall be kept in a legible condition at all times.

(3) For operation of a motorbike that meets the requirements specified in section 49-114(10), Idaho Code, on the public highways, the vehicle shall also be registered pursuant to the provisions of section 49-402(3), Idaho Code. A motorbike that meets the requirements specified in section 49-114(10), Idaho Code, and that is registered pursuant to section 49-402(3), Idaho Code, shall not be required to obtain a restricted license plate pursuant to section 49-402(4), Idaho Code. A motorbike, all-terrain vehicle, specialty off-highway vehicle or utility type vehicle operated exclusively off-highway or on highways located on state lands or federal lands which are not part of the highway system of the state of Idaho and that meet the registration requirements specified in this section shall not be required to obtain a restricted vehicle license plate pursuant to section 49-402(4), Idaho Code.

(4) Nonresidents shall be allowed to purchase a restricted vehicle license plate pursuant to section 49-402(4), Idaho Code, and/or a sticker for an all-terrain vehicle, motorbike or utility type vehicle.

History.

I.C., § 49-2707, as added by 1972, ch. 278, § 1, p. 684; am. 1982, ch. 95, § 121, p. 185; am. and redesi. 1986, ch. 233, § 2, p. 641; redesi. and am. 1988, ch. 265, § 549, p. 549; am. 1989, ch. 106, § 10, p. 238; am. 1990, ch.

391, § 5, p. 1092; am. 1992, ch. 238, § 3, p. 707; am. 1994, ch. 288, § 1, p. 907; am. 2000, ch. 315, § 4, p. 1059; am. 2006, ch. 42, § 2, p. 122; am. 2008, ch. 409, § 12, p. 1138; am. 2009, ch. 157, § 14, p. 458.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 409, rewrote the section to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 157, rewrote subsections (1) and (2) to the extent a detailed

comparison is impracticable; and added the last sentence in subsection (3).

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

JUDICIAL DECISIONS

Motor Vehicle.

Although the Chapter 7 debtors' ATV was self-propelled, and carried a licence plate, because the roads on which it could operate

were limited, and it was not required to meet safety standards, it did not qualify as a motor vehicle under Idaho law. *In re Bosworth*, 449 B.R. 104 (Bankr. D. Idaho 2011).

67-7123. Transfer of registration sticker and restricted vehicle license plate. — The purchaser of an all-terrain vehicle, utility type vehicle or motorbike, which has been previously registered pursuant to section 67-7122, Idaho Code, and issued a restricted vehicle license plate pursuant to section 49-402, Idaho Code, shall within fifteen (15) days after acquiring same, make application to the county assessor or county motor vehicle office as may be designated by the county assessor for transfer to him of the sticker of registration and restricted vehicle license plate issued to the vehicle, giving the same information as on the original application and the number of the registration sticker and restricted vehicle license plate, and shall at the same time pay a transfer fee of one dollar and fifty cents (\$1.50).

History.

I.C., § 49-2703, as added by 1972, ch. 278, § 1, p. 684; am. and redesisg. 1986, ch. 233,

§ 3, p. 641; am. and redesisg. 1988, ch. 265, § 550, p. 549; am. 1994, ch. 288, § 2, p. 907; am. 2008, ch. 409, § 13, p. 1139.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 409, rewrote the section catchline, which formerly read: "Transfer of sticker"; and rewrote the section, which formerly read: "The purchaser of an off-highway motor vehicle, which has been previously registered, shall within fifteen (15)

days after acquiring same, make application to a vendor for transfer to him of the sticker of registration issued to the off-highway vehicle, giving the same information as on the original application and the number of the sticker, and shall at the same time pay a transfer fee of one dollar and fifty cents (\$1.50)."

67-7124. Nonresident — Exemption. — (1) The provisions of section 67-7122, Idaho Code, regarding registration shall not apply to any nonresident owner; provided the all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or motorbike is currently and properly registered in the state of residence. Owners of an all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or motorbike from states that do not have a registration requirement shall be registered in Idaho under the provisions of section 67-7122, Idaho Code, prior to operation in this state.

(2) Nonresidents with an all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or motorbike registered in another state shall have the same use privileges and responsibilities as a resident of this state with a properly registered vehicle.

History.

I.C., § 49-2704, as added by 1972, ch. 278,
§ 1, p. 684; am. and redesisg. 1986, ch. 233,

§ 4, p. 641; am. and redesisg. 1988, ch. 265,
§ 551, p. 549; am. 1989, ch. 106, § 11, p. 238;
am. 2009, ch. 157, § 15, p. 458.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 157, rewrote the section, which formerly read: "The provisions of section 67-7122, Idaho Code, regarding registration shall not apply to any nonresident owner; provided that if a nonresident owner operates the vehicle for over thirty (30)

days within this state he shall be subject to the registration provisions of law."

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

67-7126. Establishment of account — Distribution of fees. —

There is established in the state treasurer's office an account to be known and designated as the "motorbike recreation account." The twelve dollar (\$12.00) fee collected for off-highway vehicle registration stickers shall be allocated as follows:

(1) Vendors shall charge and retain one dollar and fifty cents (\$1.50) for a handling fee;

(2) Up to fifteen percent (15%) shall be allotted to the department for administration and for the production of registration stickers, which moneys shall be placed in the motorbike recreation account. The department shall annually publish a report specifically identifying the uses of account moneys;

(3) One dollar (\$1.00) shall be deposited into the off-highway vehicle law enforcement fund. Moneys in said fund shall be paid and used as follows:

(a) Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program recognized by the department shall receive moneys from the fund based upon a formula as provided in rule promulgated by the board; and

(b) Moneys from the fund shall be used only for off-highway related law enforcement activities; and

(4) One dollar (\$1.00) shall be allocated to the Idaho department of lands to provide off-highway vehicle opportunities and to repair damage directly related to off-highway vehicle use. The department of lands shall annually publish a report specifically identifying the uses of moneys allocated pursuant to this subsection; and

(5) The remaining funds shall be transmitted to the state treasurer's office for deposit to the credit of the motorbike recreation account, all such moneys to be transmitted to the state treasurer on or before the tenth day of each month.

Collection of fees for off-highway vehicle registration shall not impose any additional liability on the state of Idaho or any of its political subdivisions or upon the employees of the state and of its political subdivisions, and those entities and persons shall retain the limitations of liability provided by section 36-1604, Idaho Code, regardless of the use of such fees.

History.

I.C., § 49-2706, as added by 1972, ch. 278,

§ 1, p. 684; am. 1982, ch. 95, § 122, p. 185;
am. 1984, ch. 195, § 29, p. 445; am. and

redesig. 1986, ch. 233, § 6, p. 641; am. and 1989, ch. 106, § 13, p. 238; am. 1994, ch. 288,
redesig. 1988, ch. 265, § 553, p. 549; am. § 3, p. 907; am. 2009, ch. 157, § 16, p. 458.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 157, in the introductory paragraph, substituted "twelve dollar (\$12.00) fee" for "ten (\$10.00) dollar fee"; added the last sentence in subsection (2); added subsections (3) and (4); and redesignated former subsection (3) as subsection (5), and therein substituted "tenth day of each

month" for "10th day of each month" and added the last sentence.

Effective Dates.

Section 17 of S.L. 2009, ch. 157 provided the amendment of § 67-7126 should take effect on and after January 1, 2010.

CHAPTER 73

IDAHO STATE COUNCIL FOR THE DEAF AND HARD OF HEARING

SECTION.

67-7304. Composition.

67-7304. Composition. — (1) The council shall consist of nine (9) members to be appointed by the governor.

(2) Membership shall be as follows: one (1) member shall be a deaf person representing an association of the deaf, one (1) member shall be a deaf person, one (1) member shall be the parent of a deaf child, one (1) member shall be a hard of hearing member of a national hard of hearing consumer organization, one (1) member shall be a hard of hearing person over the age of sixty (60) years, one (1) member shall be the parent of a hard of hearing child, one (1) member shall be an interpreter for the deaf, one (1) member shall be a licensed physician, and one (1) member shall be an ASHA certified audiologist.

(3) The following shall serve as ex officio nonvoting members of the council: a representative from each of the following: the Idaho bureau of educational services for the deaf and the blind, the state department of education, the division of vocational rehabilitation, the office on aging, the department of health and welfare, the bureau of occupational licenses, the department of employment, the public utilities commission, the consumer protection division of the office of the attorney general, the Idaho hearing aid society, and the director of the council for the deaf and hard of hearing.

(4) Due regard shall be given to balanced representation from geographical and demographic areas of the state for voting members of the council.

(5) Voting members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

History.

I.C., § 67-7304, as added by 1991, ch. 122,
§ 1, p. 265; am. 2009, ch. 168, § 8, p. 502.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 168, substituted “the Idaho bureau of educational ser-

vices for the deaf and the blind” for “the Idaho school for the deaf and blind” in subsection (3).

CHAPTER 74

IDAHO STATE LOTTERY

SECTION.

67-7408. Powers and duties of the commission.

67-7410. Director of lottery security.

67-7430. Temporary line of credit for start-up costs. [Repealed.]

67-7431. Cash receipts.

SECTION.

67-7432. Cash disbursements.

67-7433. Prize expense.

67-7434. Lottery dividends.

67-7436. Audits.

67-7437. Prizes.

67-7408. Powers and duties of the commission. — The commission shall be responsible for establishing the goals and objectives of the lottery and shall have the following duties, powers and responsibilities in addition to others herein granted:

(1) The commission shall adopt, upon recommendation of the director, such rules and regulations governing the establishment and operation of the lottery as it considers necessary under this chapter to ensure the integrity of the lottery and its games and to maximize the net income of the lottery for the benefit of the state. Such rules and regulations shall generally address, but not be limited to:

(a) The different types of lottery games to be conducted;

(b) The range of prize structures of each lottery game;

(c) The method, odds and frequency of selecting winning tickets and shares and the manner of paying prizes to the owners of the winning tickets and shares;

(d) The terms and conditions of lottery game retailer contracts which may include retailer compensation, bonuses, incentives, fees for redeeming claims, payment and credit terms, retailer application and renewal fees, telecommunication costs, if any, to be paid or allocated to retailers and bonding requirements;

(e) The methods to be utilized in selling and distributing lottery tickets or shares, including the use of machines, terminals, telecommunications systems and data processing systems. Customer operated machines, terminals or other devices for selling lottery tickets or shares shall only be operated by the use of currency or coin; and

(f) Other matters necessary or appropriate for the efficient operation and administration of the lottery, for the convenience of the public, and to carry out the provisions of this chapter. Every rule promulgated within the authority conferred by this chapter shall be of temporary effect and must be ratified by the legislature at the regular session first following their adoption. Rules not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following their submission to the legislature.

(2) The commission shall approve major procurements.

(3) The commission shall approve the transfer of net income in accordance with the provisions of this chapter.

(4) The commission shall have the authority to enter into written agreements or contracts, negotiated and prepared by the director, with any other state or states, the government of Canada, the provinces of Canada or an agency or contractor of any of those entities for the operation and promotion of a joint lottery or joint lottery games.

(5) The commission shall perform all other acts necessary to carry out the purposes and provisions of this chapter.

History.

I.C., § 67-7408, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 2, p. 879; am. 2013, ch. 341, § 1, p. 899.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 341, added the last sentence in paragraph (1)(e).

67-7410. Director of lottery security. — The director shall hire a security director who shall manage the lottery's security division. The security division shall be responsible for the performance of background investigations of employees, lottery retailers, bingo and raffle operators, vendors and major procurement contractors and for the enforcement of the criminal provisions of this chapter. In addition, the security division shall develop a security plan to be implemented by the lottery. The lottery's security division is herein designated as an Idaho law enforcement agency. The director of security has the authority to:

(1) Issue administrative subpoenas during the conduct of investigations in accordance with commission rules and this chapter;

(2) Require fingerprint-based criminal history check of the Idaho central database and the federal bureau of investigation's criminal history database on prospective employees, vendors, contractors, lottery retailers and bingo and raffle operators; and

(3) Access criminal offender record information from the Idaho state police for the purpose of background or other investigations performed in accordance with this chapter.

Such information obtained and kept by the security director shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Nothing herein shall prohibit the lottery from disclosing information obtained by it to law enforcement agencies or other lottery organizations for security or enforcement purposes.

History.

I.C., § 67-7410, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 4, p. 879; am. 1990, ch. 213, § 98, p. 480; am. 2000, ch. 469, § 140, p. 1450; am. 2001, ch. 196, § 2, p. 663; am. 2008, ch. 40, § 1, p. 95.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 40, rewrote subsection (2), which formerly read: "Require

fingerprint and background checks of prospective employees and contractors."

67-7430. Temporary line of credit for start-up costs. [Repealed.]

Repealed by S.L. 2011, ch. 141, § 1, effective July 1, 2011.

History.

I.C., § 67-7430, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 17, p. 879.

67-7431. Cash receipts. — The following moneys shall be deposited in the state lottery account, as established under section 67-7428, Idaho Code:

- (1) All moneys received from the sale of lottery tickets or shares; and
- (2) Any other moneys received by the lottery from whatever source.

History.

I.C., § 67-7431, as added by 1988, ch. 232, § 2, p. 446; am. 2011, ch. 141, § 2, p. 400.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, deleted former subsection (2), which read: "Funds drawn against the temporary line of credit, as

established under section 67-7430, Idaho Code," and redesignated former subsection (3) as present subsection (2).

67-7432. Cash disbursements. — The director is authorized to make the following disbursements from the state lottery account:

- (1) Payment of prizes directly to the holder of valid winning tickets or shares;
- (2) Purchase of annuities or investments to be utilized to pay future installments of winning tickets or shares;
- (3) Refunds, if any, due to lottery retailers or players;
- (4) Expenses of the lottery;
- (5) Payments to an Indian tribe pursuant to a state-tribal gaming compact negotiated pursuant to section 67-429A, Idaho Code;
- (6) The payment of the lottery's obligations, including the purchase of property, buildings and equipment; and
- (7) The payment of dividends, as provided for under section 67-7434, Idaho Code.

History.

I.C., § 67-7432, as added by 1988, ch. 232,

§ 2, p. 446; am. 1997, ch. 178, § 1, p. 496; am. 2011, ch. 141, § 3, p. 400.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, rewrote subsection (6), which formerly read: "The payment of the lottery's obligations, including the

funds advanced under the temporary line of credit, as provided for under section 67-7430, Idaho Code."

67-7433. Prize expense. — Total prize expense, net of unclaimed prizes, as determined on an annual basis, shall be no less than forty-five percent (45%) of lottery revenues.

History.

I.C., § 67-7433, as added by 1988, ch. 232,

§ 2, p. 446; am. 1989, ch. 352, § 18, p. 879; am. 2011, ch. 141, § 4, p. 400.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, deleted the former last sentence, which read: "In addition, low tier claims, if any, that are to be

paid by the selling lottery game retailer and are not claimed, shall be construed to be a prize expense and shall inure to the benefit of the selling lottery retailer."

67-7434. Lottery dividends. — (1) Annually, on July 1, the lottery shall transfer one-half (1/2) of its net income to the permanent building account and one-half (1/2) of its net income to the school district building account, after reserving sufficient moneys to ensure the continuation of the lottery, as determined by the director and commission.

(2) Beginning on July 1, 2009, the distribution of net income provided for in subsection (1) of this section, shall be superseded by the provisions of this subsection (2).

(a) Annually, on July 1, the lottery shall transfer three-eighths (3/8) of its net income to the permanent building account; three-eighths (3/8) of its net income to the school district building account; and one-fourth (1/4) of its net income to the bond levy equalization fund after reserving sufficient moneys to ensure the continuation of the lottery, as determined by the director and commission.

(b) The lottery shall ensure that the distributions made to the permanent building account and the school district building account, pursuant to the provisions of paragraph (a) of this subsection, shall not be less than the amount those accounts received for fiscal year 2008, provided funds are available at the fiscal year 2008 level. Provided however, in the event the level of available funds is less than the fiscal year 2008 level, one-half (1/2) of the available funds shall be transferred to the permanent building account and one-half (1/2) of the available funds shall be transferred to the school district building account.

(c) In the event the lottery determines that an adjustment to an annual transfer as provided in paragraph (a) of this subsection must be made pursuant to the provisions of paragraph (b) of this subsection, the difference shall be deducted from the one-fourth (1/4) net income transfer that was to be made to the bond levy equalization fund, and the bond levy equalization fund shall receive the remainder, if any.

(d) The provisions of this subsection (2) shall be null, void and of no force and effect on and after September 30, 2014.

History.

I.C., § 67-7434, as added by 1988, ch. 232, § 2, p. 446; am. 1990, ch. 377, § 3, p. 1041;

am. 1990, ch. 377, §§ 3, 6, p. 1041; am. 1991, ch. 110, § 4, p. 235; am. 2009, ch. 344, § 1, p. 1078.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 344, added the subsection (1) designation, and therein deleted the last paragraph, which read: "A one (1) time allotment of two hundred thousand dollars (\$200,000) of the lottery's first year dividends shall be allocated and used by the permanent building fund advisory council for

the construction of a Vietnam veterans memorial in the state"; and added subsection (2).

Effective Dates.

S.L. 2009, Chapter 344 became law without the signature of the governor, effective July 1, 2009.

67-7436. Audits. — A certified public accounting firm appointed by the commission shall conduct audits of all accounts and transactions of the state lottery. The director and his agents conducting an audit under this chapter shall have access and authority to examine any and all lottery-related records of lottery vendors and retailers. Such records shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.

I.C., § 67-7436, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 20, p. 879;

am. 1990, ch. 213, § 100, p. 480; am. 2011, ch. 141, § 5, p. 400.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 141, deleted the former last sentence, which read: "An

independent certified public accountant, retained by the state lottery, shall witness all drawings of the state lottery."

67-7437. Prizes. — Except as otherwise provided in this section, any prize won under this chapter is not assignable. If the prize winner dies before the prize is paid, the prize shall be paid to the estate of the prize winner. A prize is subject to garnishment and recovery for unpaid taxes, child or spousal support or public assistance benefits paid and recoverable by the state or any county, or by a person pursuant to a judgment and execution under an order of the court. A prize shall also be subject to immediate withholding and set-off to collect any support delinquency or state taxes owed upon notification from the department of health and welfare pursuant to section 56-203E, Idaho Code, or the state tax commission pursuant to section 63-3060, Idaho Code. The state lottery shall not pay a prize claim until the lottery ticket or share has passed the validation tests established by the state lottery.

No prize shall be paid arising from claimed tickets or shares that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the state lottery by applicable deadlines, lacking in captions that confirm and agree with the state lottery play symbols as appropriate to the game involved, or not in compliance with such additional specific rules and regulations and public or confidential validation and security tests of the state lottery appropriate to

the particular lottery game involved. Confidential validation or security tests shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

No particular prize in any lottery game may be paid more than once, and in the event of a binding determination that more than one (1) claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them an equal share in the prize.

History.

I.C., § 67-7437, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 21, p. 879;

am. 1990, ch. 153, § 1, p. 338; am. 1990, ch. 213, § 101, p. 480; am. 2013, ch. 250, § 2, p. 608.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 250, rewrote the fourth sentence of the first paragraph, which formerly read, "A prize shall also be

subject to withholding and set-off to collect any support delinquency upon notification from the department of health and welfare pursuant to section 56-203E, Idaho Code."

67-7444. Limitation on actions.

RESEARCH REFERENCES

A.L.R. — State lotteries: Actions by ticketholders or other claimants against state or contractor for state. 48 A.L.R.6th 243.

CHAPTER 77

BINGO AND RAFFLES

SECTION.

67-7701. Purpose and policy.

67-7702. Definitions.

67-7704. Bingo-raffle advisory board —
Members — Appointment —
Qualifications.

67-7706. Bingo-raffle advisory board — Pow-
ers — Duties.

67-7707. Bingo by charitable or nonprofit or-
ganizations.

SECTION.

67-7708. Limit on sessions and bingo prizes.

67-7709. Accounting and use of bingo pro-
ceeds.

67-7710. Raffles — Duck races.

67-7711. Licensing procedure.

67-7712. License fees — Suspension or revo-
cation.

67-7713. Licensure requirements.

67-7715. Vendors — Licensing — Fees.

67-7701. Purpose and policy. — It is hereby declared that all bingo games and raffles in Idaho must be strictly controlled and administered, and it is in the public interest for the state to provide for the administration of charitable bingo games and raffles to protect the public from fraudulently conducted bingo games and raffles, to assure that charitable groups and institutions realize the profits from these games, to prohibit professionals conducting bingo games or raffles for fees or a percentage of the profit and to provide that all expenditures by a charitable or nonprofit organization in conducting bingo games and raffles are in the best interest of raising moneys for charitable purposes.

History.

I.C., § 67-7701, as added by 1993, ch. 391, § 2, p. 1448; am. 2013, ch. 251, § 1, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, inserted "or nonprofit" near the end of the section.

JUDICIAL DECISIONS

Accounting of Checks.

Idaho lottery commission did not abuse its discretion in determining that the nonprofit organizations failed to keep and account for all checks; instead of keeping or obtaining and producing the underlying records needed to

fulfill the duty of scrutiny, the organizations told the commission to fetch the records at the commission's expense. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

67-7702. Definitions. — As used in this chapter:

(1) "Bingo" means the traditional game of chance played for a prize determined prior to the start of the game.

(a) Upon approval by the bingo-raffle advisory board a licensee may offer bingo games in which players are allowed to select their own numbers if the cards used to conduct the games have controls that provide an audit trail adequate to determine all winning number combinations.

(b) Card-minding devices are prohibited. Autodaubing features are prohibited.

(c) Bingo shall not include "instant bingo" which is a game of chance played by the selection of one (1) or more prepackaged bingo cards, with the winner determined by the appearance of a preprinted winning designation on the bingo card.

(2) "Bingo-raffle advisory board" means a board of six (6) persons chosen by the governor to make advisory recommendations regarding bingo and raffle operations and regulation in Idaho.

(3) "Charitable organization" means an organization that has been in continuous existence in the county of operation of the charitable bingo game or raffle for at least one (1) year, that conducts charitable activities, and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code and is exempt from income taxation under title 63, Idaho Code, as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad, or as a nonprofit volunteer educational booster group, parent-teacher organization or association. If the organization has local branches or chapters, the term "charitable organization" means the local branch or chapter operating the bingo or raffle game.

(4) "Commission" means the Idaho state lottery commission as defined in section 67-7404, Idaho Code.

(5) "Duck race" means a charitable raffle played by releasing numbered, inanimate toys (ducks) into a body of moving water. A person who has been assigned the same number as the first duck to cross a predetermined point in the water (the finish line) is the winner. Other prizes may be awarded on the basis of the order in which the ducks cross the finish line. With the exception of determining "net proceeds," all restrictions and requirements

applicable to the conduct of charitable raffles in this chapter shall also apply to the conduct of duck races.

(6) "Electronic bingo card" or "face" means an electronic facsimile of a bingo card or face, from a permutation of bingo cards formulated by a manufacturer licensed in Idaho, which is stored and/or displayed in a bingo card-monitoring device. An electronic bingo card or face is deemed to be a form of disposable paper bingo card.

(7)(a) "Electronic bingo device" means an electronic device used by a bingo player to monitor bingo cards purchased at the time and place of a licensed organization's bingo session, and which:

- (i) Provides a means for bingo players to input numbers announced by a bingo caller;
- (ii) Requires the player to manually enter the numbers as they are announced by a bingo caller;
- (iii) Compares the numbers entered by the bingo player to the numbers contained on bingo cards previously stored in the electronic database of the device;
- (iv) Identifies winning bingo patterns; and
- (v) Signals only the bingo player when a winning bingo pattern is achieved.

(b) "Electronic bingo device" does not mean or include any device into which coins, currency, or tokens are inserted to activate play, or any device which is interfaced with or connected to any host system which can transmit or receive any ball call information, site system or any other type of bingo equipment once the device has been activated for use by the bingo player.

(8) "Gross revenues" means all moneys paid by players during a bingo game or session for the playing of bingo or raffle events and does not include money paid for concessions; provided that the expenses of renting electronic bingo devices from a licensed vendor and the fees collected from players for the use of electronic bingo devices must be reported separately on the organization's annual bingo report and must be netted for purposes of determining gross revenues as follows: only fees collected from players in excess of the rental charges paid to licensed vendors will be considered to be a part of gross revenues, and if the costs of renting electronic bingo devices from a licensed vendor exceed the fees collected from players for use of electronic bingo devices, the difference will be considered an administrative expense for purposes of section 67-7709(1)(d), Idaho Code.

(9) "Host system" means the computer hardware, software and peripheral equipment of a licensed manufacturer which is used to generate and download electronic bingo cards to a licensed organization's site system, and which monitors sales and other activities of a site system.

(10) "Nonprofit organization" means an organization incorporated under chapter 3, title 30, Idaho Code.

(11) "Organization" means a charitable organization or a nonprofit organization.

(12) "Person" shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock

company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include departments, commissions, agencies and instrumentalities of the state of Idaho, including counties and municipalities and agencies or instrumentalities thereof.

(13) "Raffle" means a game in which the prize is won by random drawing of the name or number of one (1) or more persons purchasing chances.

(14) "Session" means a period of time not to exceed eight (8) hours in any one (1) day in which players are allowed to participate in bingo games operated by a charitable or nonprofit organization.

(15) "Site system" means the computer hardware, software and peripheral equipment used by a licensed organization at the site of its bingo session which provides electronic bingo cards or bingo card monitoring devices to players, and which receipts the sale or rental of such cards and devices and generates reports relative to such sales or rentals.

(16) "Vendor" means an applicant, licensee or manufacturer, distributor or supplier licensed or unlicensed that furnishes or supplies bingo or raffle equipment, disposable or nondisposable cards and any and all related gaming equipment.

History.

I.C., § 67-7702, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 1, p. 874; am. 1995, ch. 350, § 1, p. 1151; am. 1996, ch. 382, § 1, p. 1294; am. 2000, ch. 340, § 1, p.

1135; am. 2003, ch. 301, § 1, p. 827; am. 2005, ch. 259, § 1, p. 795; am. 2005, ch. 356, § 1, p. 1125; am. 2006, ch. 16, § 28, p. 42; am. 2008, ch. 43, § 1, p. 99; am. 2013, ch. 251, § 2, p. 610.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 43, in subsection (3), inserted "that conducts charitable activities"; in subsection (8), substituted "events" for "event" near the beginning and added the proviso; and in subsection (11), deleted "or an unincorporated association rec-

ognized under chapter 7, title 53, Idaho Code" from the end.

The 2013 amendment, by ch. 251, deleted former subsections (9) and (17), defining "Holiday Christmas tree fundraiser" and "Special permit", and redesignated the remaining subsections accordingly.

67-7704. Bingo-affle advisory board — Members — Appointment — Qualifications. — (1) The bingo-affle advisory board shall consist of six (6) members appointed by the governor and confirmed by the senate. Members shall be selected and appointed because of their ability and disposition to serve the state's interest and for knowledge of bingo and raffle operations. Members appointed by the governor shall serve at the pleasure of the governor, and shall be residents over twenty-five (25) years of age who have experience in administrating, conducting or regulating bingo or raffle operations. There shall be one (1) member from each of the following six (6) districts initially established as follows:

(a) District No. 1. The counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.

(b) District No. 2. The counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.

(c) District No. 3. The counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Payette, Owyhee, Valley and Washington.

(d) District No. 4. The counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.

(e) District No. 5. The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida and Power.

(f) District No. 6. The counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton.

(2) The terms of appointed members of the bingo-raffle advisory board shall be three (3) years. At the end of a term, a member continues to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. A vacancy of the board shall be filled in the same manner as regular appointments are made, and the term shall be for the unexpired portion of the regular term. No member of the board shall have a direct or indirect pecuniary interest in any contract or agreement entered into by the board. No more than three (3) members of the board shall belong to the same political party.

History.

I.C., § 67-7704, as added by 1995, ch. 350, § 3, p. 1151; am. 2000, ch. 340, § 3, p. 1135; am. 2013, ch. 251, § 3, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, added the subsection designations; inserted "or raffle" near the end of the third sentence in the

introductory paragraph in subsection (1); and deleted the length of terms of the first appointed members in subsection (2).

67-7706. Bingo-raffle advisory board — Powers — Duties. — The bingo-raffle advisory board shall review the operation and regulation of bingo games and raffle events in Idaho, and shall make recommendations to the state lottery commission regarding, but not limited to, the following issues:

(1) The issuances of licenses for the operation of bingo games and raffle events, including the denial, suspension or revocation of licenses;

(2) The collection of fees, penalties, fines and other moneys from organizations conducting or applying to conduct bingo games and/or raffle events;

(3) The maintenance by bingo operators of records and the efficacy of the statutes and rules requiring maintenance of records;

(4) The recordation and reporting of income from bingo games and raffle events to the state lottery commission, and the efficacy of the statutes and rules governing recordation and reporting;

(5) The efficacy and profitability of income and expenditure limits placed on organizations, by statute or rule, operating bingo games and/or raffle events in the state;

(6) The type, scope, manner, and frequency of bingo games and/or raffle events conducted in Idaho, and the efficacy of the statutes or rules governing those considerations;

(7) Possible cooperative agreements with county, city, and other local and

state agencies that would enhance the safety and profitability of bingo games and/or raffle events;

(8) Possible written agreements or contracts with other states or any agency or contractor of another state for the operation and promotion of joint bingo games and/or raffle events that would enhance the safety and profitability of bingo and raffle operations in Idaho;

(9) What rules should be promulgated by the state lottery commission to ensure the safe, orderly and trustworthy operation of bingo games and/or raffle events in Idaho.

The bingo-affle advisory board shall, at least twice a year, report to the state lottery commission addressing the operations and activities of the advisory board and the major issues facing bingo operators in the state. The lottery security division shall provide a final annual report to the governor, the lottery commission, the president pro tempore of the senate and the speaker of the house of representatives of the Idaho legislature.

History.

I.C., § 67-7706, as added by 1995, ch. 350, § 5, p. 1151; am. 2000, ch. 340, § 5, p. 1135; am. 2013, ch. 251, § 4, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, substituted "The lottery security division shall pro-

vide a final annual report" for "A final annual report shall be provided" at the beginning of the last sentence in the last paragraph.

67-7707. Bingo by charitable or nonprofit organizations. — (1) It is lawful for a charitable or nonprofit organization to conduct bingo sessions or games in accordance with the provisions of this chapter and the rules of the state lottery commission. Any charitable or nonprofit organization, any member of a charitable or nonprofit organization, or any person that conducts a bingo session or game in violation of any provision of this chapter or the rules of the state lottery commission may be assessed a civil penalty not in excess of ten thousand dollars (\$10,000) per violation. Additionally, any person knowingly conducting a bingo session or game in violation of the provisions of this chapter or the rules of the state lottery commission may be charged under the gambling laws contained in chapter 38, title 18, Idaho Code. Violations will be prosecuted by the county prosecuting attorney.

(2) No person under the age of eighteen (18) years may play bingo in games where a cash prize is offered or where the prize exceeds twenty-five dollars (\$25.00) in value for merchandise.

History.

I.C., § 67-7703, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 2, p. 874; am. and redesisg. 1995, ch. 350, § 6, p. 1151; am. 1996, ch. 382, § 4, p. 1294; am. 2000, ch. 340, § 6, p. 1135; am. 2013, ch. 251, § 5, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, inserted "per violation" at the end of the second sentence in subsection (1); and, in subsection (2),

deleted the last sentence, which read: "No person under the age of eighteen (18) may play bingo in any game operated by a licensed charitable or nonprofit organization."

JUDICIAL DECISIONS

Cited in: Sons & Daughters of Idaho, Inc.
v. Idaho Lottery Comm'n, 144 Idaho 23, 156
P.3d 524 (2007).

67-7708. Limit on sessions and bingo prizes. — The number of sessions or games of bingo conducted or sponsored by a charitable or nonprofit organization shall be limited to three (3) sessions per week and such sessions shall not exceed a period of eight (8) hours per day. The maximum prize that may be offered or paid for any one (1) game of bingo, and the maximum aggregate amount of prizes that may be offered or paid for any one (1) session of bingo, shall be set by rule of the state lottery commission.

History.

I.C., § 67-7704, as added by 1993, ch. 391,

§ 2, p. 1448; am. and redesign. 1995, ch. 350,
§ 7, p. 1151; am. 2013, ch. 251, § 6, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, deleted the former second sentence regarding maximum prize limits until July 1, 1997, deleted "After July 1, 1997" at the beginning of the

present second sentence, and deleted the former last sentence, which read: "Provided however, that the maximums to be set by the state lottery commission shall not be below the amounts described in this statute."

67-7709. Accounting and use of bingo proceeds. —

(1)(a) All funds received in connection with a bingo game required to be licensed pursuant to this chapter and the rules of the state lottery commission shall be placed in a separate bank account that is in the name of and controlled by the charitable or nonprofit organization. No funds may be disbursed from this account except the charitable or nonprofit organization may expend proceeds for prizes, advertising, rent including, but not limited to, renting space, chairs, tables, equipment and electronic bingo devices, utilities, the purchase of supplies and equipment in playing bingo, taxes and license fees related to bingo, the payment of compensation, and for the purposes set forth below for the remaining proceeds.

(b) Funds from bingo accounts must be withdrawn by preprinted, consecutively numbered checks or withdrawal slips, signed by an authorized representative of the licensed authorized organization and made payable to a person. A check or withdrawal slip shall not be made payable to "cash," "bearer" or a fictitious payee. The nature of the payment made shall be noted on the face of the check or withdrawal slip. Checks for the bingo account shall be imprinted with the words "bingo account" and shall contain the organization's bingo license name on the face of each check. A licensed authorized organization shall keep and account for all checks and withdrawal slips, including voided checks and withdrawal slips. Electronic transfers from the bingo account may be used for payments made to another governmental agency.

(c) Any proceeds available in a bingo account after payment of the expenses set forth in paragraph (1)(a) of this subsection shall inure to the

charitable or nonprofit organization to be used for religious, charitable, civic, scientific testing, public safety, literary or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land, or a building or improvements thereto, owned, leased or rented by and for the charitable or nonprofit organization and used for civic purposes or made available by the charitable or nonprofit organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended directly or indirectly to compensate officers or directors. The licensed bingo operation must maintain records for five (5) years on forms prescribed by the commission or pursuant to rules prescribed by the commission showing the charitable activities to which the proceeds described in this paragraph are applied. No employees of the charitable or nonprofit organization may be compensated from bingo proceeds except as provided in this subsection.

(d)(i) All gross revenues received from bingo games by a charitable or nonprofit organization must be disbursed in the following manner, unless otherwise provided in section 67-7708, Idaho Code: not less than twenty percent (20%) of gross revenues shall be used for charitable purposes enumerated in this subsection, and a maximum of eighteen percent (18%) of the gross revenues may be used for administrative expenses associated with the charitable bingo game. An organization requesting an exemption from the disbursement percentages provided in this paragraph for administrative costs shall request such an exemption from the state lottery commission.

(ii) Two hundred fifty dollars (\$250) or one-tenth of one percent (.1%) of annual gross revenues, as per the previous year's annual bingo report whichever is greater may be paid as wages for the conduct of any one (1) bingo session. Such wages shall be paid on an hourly basis, shall be directly related to the preparation, conduct of and cleaning following a bingo session, and shall be paid out of the organization's separate bank account unless the director of lottery security has given prior written permission to pay wages out of another account. Such wages shall be part of the eighteen percent (18%) gross revenues used for administrative expenses.

(2) Any charitable or nonprofit organization conducting bingo games pursuant to this chapter shall prepare a statement at the close of its license year and shall file such statement with the state lottery. The statement shall be prepared on a form prescribed by the lottery commission and shall include, at a minimum, the following information:

- (a) The number of bingo sessions conducted or sponsored by the licensed organization;
- (b) The location and date at which each bingo session was conducted;
- (c) The gross revenues of each bingo session;
- (d) The fair market value of any prize given at each bingo session;
- (e) The number of individual players participating in each session;
- (f) The number of cards played in each session;
- (g) The amount paid in prizes at each session;

- (h) The amount paid to the charitable or nonprofit organization;
- (i) All disbursements from bingo revenue and the purpose of those disbursements must be documented on a general ledger and submitted with the annual bingo report to the Idaho lottery commission; and
- (j) An accounting of all gross revenues and the disbursements required by statute and rule of the state lottery commission must be retained in records with the organization, including the date of each transaction and the name and address of each payee for all prize payments in excess of one hundred dollars (\$100) and the disbursements of funds to charitable activities, including the identity of the charity and/or purpose and use of the disbursements by the charity. Such records shall be retained for a period of five (5) years.

(3) Any organization required to be licensed to conduct bingo operations under the provisions of this chapter shall use only nonreusable colored bingo paper or electronic bingo paper so that all sales may be tracked. The nonreusable colored paper must have a series and serial number on each card. At the conclusion of each session, all organizations using nonreusable bingo paper must track their bingo sales per session by recording the series and serial numbers of all paper sold, damaged, donated or used for promotion in that session. Each such organization shall keep a ledger of the numbers of all such papers used during each session. All paper must be tracked as either sold, damaged, donated, used for promotion, or omitted from the original distributor or manufacturer. Paper tracking ledgers and invoices from the distributor or manufacturer for nonrefundable colored bingo paper must be kept with the permanent records for that bingo operation.

(4) Any person who shall willfully or knowingly furnish, supply or otherwise give false information in any statement filed pursuant to this section shall be guilty of a misdemeanor.

(5) All financial books, papers, records and documents of an organization shall be kept as determined by rule of the state lottery and shall be open to inspection by the county sheriff of the county, or the chief of police of the city, or the prosecuting attorney of the county where the bingo game was held, or the attorney general or the state lottery at reasonable times and during reasonable hours.

(6) Every charitable or nonprofit organization whose annual gross revenues exceed two hundred thousand dollars (\$200,000) from the operation of bingo games shall provide the state lottery with a copy of an annual audit of the bingo operation. The audit shall be performed by an independent certified public accountant who is licensed in the state of Idaho and who meets peer review requirements set forth by the Idaho state board of accountancy. The audit shall be submitted to the Idaho state lottery within ninety (90) days after the end of the license year.

History.

I.C., § 67-7705, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 3, p. 874; am. and redesisg. 1995, ch. 350, § 8, p. 1151; am. 1996, ch. 382, § 5, p. 1294; am. 2000, ch.

340, § 7, p. 1135; am. 2003, ch. 301, § 2, p. 827; am. 2003, ch. 314, § 1, p. 857; am. 2005, ch. 259, § 2, p. 795; am. 2008, ch. 43, § 2, p. 102; am. 2012, ch. 259, § 1, p. 719; am. 2013, ch. 251, § 7, p. 610.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 43, in paragraph (1)(a), inserted “rental of electronic bingo devices” in the last sentence; added the next-to-last sentence in paragraph (1)(c); added the paragraph (d)(i) designation, and therein added the last sentence; added the paragraph (d)(ii) designation, and therein, in the second sentence, substituted “wages shall be paid on an hourly basis” for “pay shall be on an hourly basis,” and added “and shall be paid out of the organization’s separate bank account unless the director of lottery security has given prior written permission to pay wages out of another account,” and deleted the former last sentence, which read: “An organization requesting an exemption from the disbursement percentages provided in this subsection for administrative costs may request an exemption from the state lottery commission”; and in paragraph (2)(j), added “and the disbursements of funds to charitable activities, including the identity of the charity and/or purpose and use of the disbursements by the charity.”

The 2012 amendment, by ch. 259, in paragraph (1)(d)(i), deleted “not more than sixty-five percent (65%) of the gross revenues shall be used for prizes in the charitable bingo game” following “section 67-7708, Idaho Code:” and substituted “and a maximum of

eighteen percent (18%) of the gross revenues may” for “and not more than fifteen percent (15%) of the gross revenues shall” in the first sentence, deleted the former second sentence concerning decreasing the gross revenues spent and allocating those revenues to prizes, and substituted “shall request such” for “may request” in the last sentence; and substituted “eighteen percent (18%)” for “fifteen percent (15%)” in paragraph (1)(d)(ii).

The 2013 amendment, by ch. 251, in paragraph (1)(a), inserted “that is in the name of and controlled by the charitable or nonprofit organization” at the end of the first sentence and substituted “rent including, but not limited to, renting space, chairs, tables, equipment and electronic bingo devices, utilities” for “utilities, rental of electronic bingo devices, and” in the last sentence; added the last sentence in paragraph (1)(b); in (1)(c), substituted “five (5) years” for “three (3) years” in the second sentence and inserted “or nonprofit” in the last sentence in paragraph (2)(h); in paragraph (2)(j), deleted “permanent” preceding “records” near the beginning of the first sentence and added the last sentence; and substituted the last two sentences in subsection (6) for “The audit shall be performed by an independent public accountant and submitted within ninety (90) days after the end of the license year.”

JUDICIAL DECISIONS

ANALYSIS

Accounting of checks.
Compensation.

Accounting of Checks.

Idaho lottery commission did not abuse its discretion in determining that the nonprofit organizations failed to keep and account for all checks; instead of keeping or obtaining and producing the underlying records needed to fulfill the duty of scrutiny, the organizations told the commission to fetch the records at the commission’s expense. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 144 Idaho 23, 156 P.3d 524 (2007).

Compensation.

Fact that the bingo organizers did not re-

ceive a paycheck from the organizations did not mean that they were volunteers working on behalf of the organization where the arrangement with the non-gaming equipment provider ran afoul of the prohibition on contracting with outsiders to conduct bingo; the equipment provider received not rents, but bingo profits, and to the extent that the organizers exercised control over the expenses, they were doing so as agents of the provider, not of the organizations. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 144 Idaho 23, 156 P.3d 524 (2007).

67-7710. Raffles — Duck races. — (1) It is lawful for any charitable or nonprofit organization to conduct raffles in accordance with the provisions of this chapter. Any charitable or nonprofit organization or any person that conducts a raffle in violation of any provision of this chapter may be assessed a civil penalty not in excess of ten thousand dollars (\$10,000) per violation.

Additionally, any person knowingly conducting a raffle in violation of any provision of this chapter or rule of the state lottery commission may be charged under the gambling laws of the state contained in chapter 38, title 18, Idaho Code, and may be assessed a civil penalty by the lottery not in excess of ten thousand dollars (\$10,000) per violation. It shall not constitute a violation of state law to advertise a charitable raffle conducted pursuant to this section. It is lawful to participate in a charitable raffle conducted pursuant to this chapter. A charitable raffle conducted lawfully pursuant to this chapter is not gambling for purposes of chapter 38, title 18, Idaho Code.

(2) Raffle drawings must be held in Idaho and shall be limited to twelve (12) per charitable or nonprofit organization per year, provided that this limitation shall not apply to public or private elementary schools, secondary schools or higher education institutions located in this state. The maximum aggregate value of cash prize(s) that may be offered or paid for any one (1) raffle, which is not a duck race is one thousand dollars (\$1,000) and if merchandise is used as a prize and it is not redeemable for cash, there shall be no limit on the maximum amount of value for the merchandise. For duck races, there shall be no limit on the maximum amount of the value of a cash prize if the cash prize is underwritten by insurance. If a duck race offers a cash prize that is not underwritten by insurance, the maximum aggregate value of the cash prize(s) is one thousand dollars (\$1,000). There shall be no limit on the maximum of value for merchandise used as a prize in a duck race if the merchandise is not redeemable for cash.

(3) As used in this subsection, "net proceeds of a charitable raffle" means the gross receipts less the cost of prizes awarded. "Net proceeds of a duck race" shall mean gross receipts, less the cost of prizes awarded and the rental cost of the ducks used in the race. No less than eighty percent (80%) of the net proceeds of a raffle shall be used by the charitable or nonprofit organization for charitable, religious, educational, civic or other charitable purposes.

(4) Any licensed charitable or nonprofit organization conducting raffles pursuant to this chapter shall prepare a statement at the close of its license year and shall file such statement with the state lottery. The statement shall be prepared on a form prescribed by the lottery commission and shall include, at a minimum, the following information:

- (a) The number of raffles conducted or sponsored by the charitable or nonprofit organization;
- (b) The location and date at which each raffle was conducted;
- (c) The gross revenues of each raffle;
- (d) The fair market value of any prize given at each raffle;
- (e) The amount paid in prizes at each raffle;
- (f) The amount paid to the charitable or nonprofit organization;
- (g) An accounting of all gross revenues and the disbursements required by statute and rule of the state lottery commission that shall be retained in the organization's records for a period of five (5) years.

(5) Every charitable or nonprofit organization whose annual gross revenues exceed two hundred thousand dollars (\$200,000) from the operation of raffle events shall provide the state lottery with a copy of an annual audit of

the raffle events. The audit shall be performed by a certified public accountant who is licensed in the state of Idaho and who meets the peer review requirements set forth by the Idaho state board of accountancy. The audit shall be submitted to the Idaho state lottery within ninety (90) days after the end of the license year.

History.

I.C., § 67-7706, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 4, p. 874; am. and redesign. 1995, ch. 350, § 9, p. 1151; am. 1996, ch. 382, § 6, p. 1294; am. 1999, ch.

134, § 1, p. 380; am. 2000, ch. 340, § 8, p. 1135; am. 2005, ch. 356, § 2, p. 1125; am. 2012, ch. 259, § 2, p. 719; am. 2013, ch. 251, § 8, p. 610.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 259, in the last sentence in subsection (3) substituted "eighty percent (80%)" for "ninety percent (90%)", inserted "or nonprofit," and substituted "or other charitable purposes" for "or other nonprofit purposes" at the end.

The 2013 amendment, by ch. 251, rewrote the section to the extent that a detailed comparison is impracticable, deleting provisions relating to holiday Christmas tree fundraisers.

67-7711. Licensing procedure. — (1) Any charitable or nonprofit organization not exempt pursuant to section 67-7713, Idaho Code, desiring to operate bingo sessions or games or charitable raffles shall make application for a license to the state lottery. The state lottery shall review the license application and shall approve or deny the issuing of a license within fifteen (15) calendar days of receipt of the license application. The state lottery may deny the application if it determines that the applicant has not met requirements for an application imposed in this chapter and rules promulgated pursuant to this chapter or upon any ground for which an application for renewal of a license could be denied or for which an existing licensee's license could be revoked or suspended. Whenever an application is denied, it shall be returned to the applicant by the state lottery with specific reasons for the denial. When a license application is approved by the state lottery, the state lottery shall issue a license to the applicant. No person or charitable or nonprofit organization, except those exempt pursuant to section 67-7713, Idaho Code, shall operate or conduct a bingo session or game or charitable raffle until it has received a license from the state lottery. The license shall expire one (1) year after the date it was issued.

(2) Each application and renewal application shall contain the following information:

- (a) The name, address, date of birth, driver's license number and social security number of the applicant and if the applicant is a corporation, association or other similar legal entity, the name, home address, date of birth, driver's license number and social security number of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization;
- (b) The name, home address, date of birth, driver's license number and social security number of each of the person or persons responsible for managing the bingo session or game or raffle;
- (c)(i) In the case of charitable organizations, a copy of the application for

recognition of exemptions and a determination letter from the internal revenue service that indicates that the organization is a charitable organization and stating the section under which that exemption is granted, except that if the organization is a state or local branch, lodge, post or chapter of a national organization, a copy of the determination letter of the national organization shall satisfy this requirement; and (ii) In the case of incorporated nonprofit organizations, a copy of a certificate of existence issued by the secretary of state pursuant to chapter 3, title 30, Idaho Code, establishing the organization's good standing in the state.

(d) The location at which the applicant will conduct the bingo session or games or drawings for the raffles.

(3) The operation of bingo sessions or games or charitable raffles shall be the direct responsibility of, and controlled by, the governing body of the organization and the members of the governing body shall be held responsible for the conduct of the bingo sessions or games or raffles. No directors or officers of an organization or persons related to them either by marriage or blood within the second degree shall receive any compensation derived from the proceeds of a bingo session or raffle regulated under the provisions of this chapter. An organization shall not contract with any person for the purpose of conducting a bingo session or providing bingo services or conducting a raffle on the organization's behalf, provided that this prohibition does not prevent a bingo organization from hiring employees and paying wages as provided in section 67-7709(1)(d)(ii), Idaho Code. However, if the state lottery commission has entered into an agreement or contract with another state for the operation or promotion of joint bingo sessions, the charitable or nonprofit organization may participate in that contract or agreement.

(4) Different chapters of an organization may apply for and share one (1) license to conduct raffles so long as the information required in subsection (2) of this section is provided to the lottery prior to the issuance of the license.

(5) The organization may apply for the license to coincide with the organization's fiscal year.

History.

I.C., § 67-7707, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 5, p. 874; am. and redesisg. 1995, ch. 350, § 10, p. 1151;

am. 1996, ch. 382, § 7, p. 1294; am. 2000, ch. 340, § 9, p. 1135; am. 2008, ch. 43, § 3, p. 104; am. 2013, ch. 251, § 9, p. 610.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 43, in subsection (1), inserted "for an application," twice substituted "chapter" for "act," and added "or upon any ground for which an application for renewal of a license could be denied or for which an existing licensee's license could be revoked or suspended"; in paragraph (2)(c)(i), deleted "and the state tax commission" following "internal revenue service"; deleted para-

graph (2)(c)(iii), which pertained to a statement appointing an agent for service of process; and in the next-to-last sentence in subsection (3), deleted "not employed by, or a volunteer for, the organization" following "person," inserted "providing bingo services or conducting a," and added the proviso.

The 2013 amendment, by ch. 251, deleted the former last sentence of subsection (1), which read, "A copy of the license shall be

furnished to the county sheriff of the county or the chief of police of the city in which the licensee intends to operate a bingo session or game or sell charitable raffle tickets before a bingo session or game or a charitable raffle is conducted by the licensee"; and, in subsection

(3), combined the former first and second sentences, deleting "a special committee selected by" following "controlled by" and substituting "and" for "If the governing body has not appointed a special committee" following "organization."

JUDICIAL DECISIONS

ANALYSIS

Compensation.
Constitutionality.

Compensation.

Fact that the bingo organizers did not receive a paycheck from the organizations did not mean that they were volunteers working on behalf of the organization where the arrangement with the non-gaming equipment provider ran afoul of the prohibition on contracting with outsiders to conduct bingo; the equipment provider received not rents, but bingo profits, and to the extent that the organizers exercised control over the expenses, they were doing so as agents of the provider, not of the organizations. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

Constitutionality.

Contrary to the organization's assertion, it was not at all unexpected that a statute governing licensing procedure might specify some of the substantive conditions that must be satisfied in order for a license to issue; the derivative compensation and anti-outsourcing provisions, as conditions of licensure, were sufficiently related to licensing procedure to survive a constitutional challenge. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

67-7712. License fees — Suspension or revocation. — (1) Each organization that applies to the state lottery for a license pursuant to this chapter shall pay annually to the state lottery a nonrefundable license fee which shall be due upon submission of the application. License fees shall be based on the organization's gross revenues from bingo or raffle operations as required to be reported by statute or rule of the commission. Organizations with gross revenues of twenty-five thousand dollars (\$25,000) or less shall pay a fee of one hundred dollars (\$100). Organizations with gross revenues of twenty-five thousand dollars (\$25,000) to seventy-five thousand dollars (\$75,000) shall pay a fee of two hundred dollars (\$200). Organizations with gross revenues exceeding seventy-five thousand dollars (\$75,000) shall pay a fee of three hundred dollars (\$300). New organizations with no history of gross revenues shall pay a fee of one hundred dollars (\$100), and the gross revenues indicated in the organization's first annual report shall determine the license renewal fee.

(2) Any license issued pursuant to this chapter may be suspended or revoked by the state lottery if it is found that the licensee or any person connected with the licensee has violated any provision of this chapter or any rule of the lottery commission or ordinance of a county adopted pursuant to this chapter or:

- (a) Has continued to operate bingo sessions or games after losing its tax exempt or nonprofit status or ceases to exercise independent control over its activities or budget as required under the provisions of this chapter;
- (b) Has violated or has failed or refused to comply with the provisions of this chapter, or has violated the provisions of a rule of the lottery

commission or has allowed such a violation to occur upon premises over which the licensee has substantial control;

(c) Has knowingly caused, aided or abetted, or conspired with another to cause, any person to fail or refuse to comply with the provisions, requirements, conditions, limitation or duties imposed in this chapter, or to fail or refuse to comply with a rule adopted by the state lottery commission;

(d) Has obtained a license or permit by fraud, misrepresentation or concealment, or through inadvertence or mistake;

(e) Has been convicted, forfeited bond, or has been granted a withheld judgment, upon a charge involving forgery, theft, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports to a governmental agency, or any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor, involving gambling activity, physical injury to individuals or moral turpitude;

(f) Denies the state lottery access to any place where a licensed game is conducted, denies access to any law enforcement officer, or fails promptly to produce for inspection or audit any records or items as required by law;

(g) Fails to have the license available for verification where the licensed game is conducted;

(h) Misrepresents or fails to disclose to the state lottery or any investigating law enforcement officer any material fact;

(i) Fails to demonstrate to the state lottery by clear and convincing evidence, qualifications for the license according to state law and the rules of the state lottery establishing such qualifications;

(j) Is subject to current prosecution or pending charges, or to a conviction regardless of whether it has been appealed, for any offense described in paragraph (e) of this subsection. At the request of an applicant for an original license, the state lottery may defer decision upon the application during the pendency of the prosecution or appeal;

(k) Has pursued or is pursuing economic gain in a manner or context which violates criminal or civil public policy of this state and creates a reasonable belief that the participation of the person in gaming operations by charitable or nonprofit organizations would be harmful to the proper operation of a lawful bingo or raffle.

(3) The state lottery may, upon its own motion or upon a written verified complaint of any other person, investigate the operation of any gaming purportedly authorized in this chapter. If the state lottery has reasonable cause to believe that any gaming as described in this chapter violates any of the provisions of this chapter or rules promulgated pursuant to this chapter, it may, in its discretion, place in probationary status, revoke, cancel, rescind or suspend any license. The state lottery may refuse to grant a renewal of the license or it may take other action as may be appropriate under this chapter and any rules promulgated pursuant to this chapter. If the state lottery shall refuse to grant a license or refuse to grant a renewal of a license or revoke, cancel, rescind or suspend a license, it shall give the applicant or

licensee fifteen (15) calendar days' written notice of its intended action stating generally the basis for its action. Within the fifteen (15) calendar day notice period, the applicant or licensee shall indicate its acceptance of the decision of the state lottery or shall request a hearing to be held in the same manner as hearings in contested cases pursuant to chapter 52, title 67, Idaho Code. The hearing shall be conducted within twenty-one (21) days of the request. The applicant or licensee may appeal the decision of the state lottery after the hearing within the same time and manner as provided for judicial review of actions pursuant to chapter 52, title 67, Idaho Code. Failure to make the request for a hearing as provided herein, shall render the decision of the state lottery final and not subject to further appeal.

History.

I.C., § 67-7708, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 6, p. 874;

am. and redesign. 1995, ch. 350, § 11, p. 1151; am. 1996, ch. 382, § 8, p. 1294; am. 2013, ch. 251, § 10, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, substituted "may be suspended" for "shall be suspended" in the introductory paragraph in subsection (2); and, in subsection (3), divided the former second sentence into present second

and third sentences, inserted "place in probationary status", substituted "The state lottery" for "for a period not to exceed one (1) year, or it", and substituted "this chapter" for "this act" two times.

JUDICIAL DECISIONS

Cited in: Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n, 144 Idaho 23, 156 P.3d 524 (2007).

67-7713. Licensure requirements. — A charitable or nonprofit organization conducting a bingo game shall be required to obtain a license if the gross annual bingo sales are ten thousand dollars (\$10,000) or more. A charitable or nonprofit organization conducting a raffle shall be required to obtain a license if the maximum aggregate value of merchandise exceeds five thousand dollars (\$5,000).

History.

I.C., § 67-7710, as added by 1993, ch. 391, § 2, p. 1448; am. and redesign. 1995, ch. 350, § 12, p. 1151; am. 1996, ch. 382, § 9, p. 1294;

am. 2000, ch. 340, § 10, p. 1135; am. 2003, ch. 313, § 1, p. 857; am. 2013, ch. 251, § 11, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, substituted "five thousand dollars (\$5,000)" for "one

thousand dollars (\$1,000)" at the end of the last sentence.

67-7715. Vendors — Licensing — Fees. — (1) No person or entity shall manufacture, sell, distribute, furnish or supply to any person or entity any gaming device, equipment or material, in this state or for use in this state, without first obtaining a vendor's license from the state lottery commission. Vendor licenses shall not be issued by the state lottery except

respecting devices, equipment or material designed and permitted to be used in connection with activities authorized under this chapter. Provided however, that this licensing requirement shall apply only insofar as the state lottery commission has adopted rules implementing it as to particular categories of gaming devices and related material and equipment.

(2) Any person or entity that manufactures, sells, distributes, furnishes or supplies any gaming device, equipment or material, in this state or for use in this state shall make application for a vendor license to the state lottery. The state lottery shall review the license application and shall approve or deny the issuing of a license within fifteen (15) calendar days of receipt of the license application. The state lottery may deny the application if it determines that the applicant has not met the requirements imposed in this chapter and rules promulgated pursuant to this chapter. Whenever an application is denied, it shall be returned to the applicant by the state lottery with specific reasons for the denial. When the license application is approved by the state lottery, the state lottery shall issue a license to the applicant.

(3) Each application and renewal application shall contain the following information:

(a) The name, address, date of birth, driver's license number and social security number of the applicant and if the applicant is a corporation, proprietorship, association, partnership or other similar legal entity, the name, home address, date of birth, driver's license number and social security number of each of the officers of the corporation and their spouses, as well as the name and address of the directors and their spouses, or other persons similarly situated.

(b) The locations or persons with which the applicant will provide any gaming device, equipment or material in this state or for use in this state.

(4) Each applicant shall pay annually to the state lottery a nonrefundable license fee of five hundred dollars (\$500) which shall be due upon submission of the application.

(5) Each licensed vendor shall maintain records of all sales to organizations in Idaho for a period of five (5) years. Such records shall be provided to the lottery upon request.

(6) Any license issued pursuant to this section shall be suspended or revoked by the state lottery and the licensee may be assessed a civil penalty by the state lottery up to ten thousand dollars (\$10,000) per violation if it is found that the licensee or any person connected with the licensee has violated any provision of this chapter, particularly those in section 67-7712, Idaho Code, or any rule of the lottery commission.

History.

I.C., § 67-7715, as added by 1995, ch. 350, § 14, p. 1151; am. 1996, ch. 382, § 10, p.

1294; am. 2000, ch. 340, § 11, p. 1135; am. 2013, ch. 251, § 12, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, substituted "chapter" for "act" two times in the third

sentence of subsection (2); deleted former subsection (4), which read, "Any licensee under this section shall submit an annual revenue

report to the Idaho lottery commission within thirty (30) days of the end of the licensed year on the prescribed forms provided by the Idaho lottery commission"; redesignated former subsection (5) as subsection (4); inserted pres-

ent subsection (5); and, in subsection (6), substituted "section" for "chapter" and inserted "and the licensee may be assessed a civil penalty by the state lottery up to ten thousand dollars (\$10,000) per violation."

CHAPTER 79

RESTRICTIONS ON PUBLIC BENEFITS

SECTION.

67-7901. Legislative findings.

67-7902. Definitions.

SECTION.

67-7903. Verification of lawful presence —
Exceptions — Reporting.

67-7901. Legislative findings. — (1) The legislature hereby finds and declares that it is the public policy of the state of Idaho that all persons eighteen (18) years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits.

(2) The intent of the legislature is not to regulate immigration but to control public expenditures for certain public benefits, not inconsistent with federal law.

History.

I.C., § 67-7901, as added by 2007, ch. 311,
§ 1, p. 877.

67-7902. Definitions. — As used in this chapter:

(1) "Emergency medical condition" shall have the same meaning as provided in 42 U.S.C. section 1396b(v)(3).

(2) "Federal public benefit" shall have the same meaning as provided in 8 U.S.C. section 1611(c).

(3) "State or local public benefit" shall have the same meaning as provided in 8 U.S.C. section 1621(c).

History.

I.C., § 67-7902, as added by 2007, ch. 311,
§ 1, p. 877.

67-7903. Verification of lawful presence — Exceptions — Reporting. — (1) Except as otherwise provided in subsection (3) of this section or where exempted by federal law, each agency or political subdivision of this state shall verify the lawful presence in the United States of each natural person eighteen (18) years of age or older who applies for state or local public benefits or for federal public benefits for the applicant.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

(3) Verification of lawful presence in the United States shall not be required:

(a) For any purpose for which lawful presence in the United States is not required by law, ordinance or rule;

(b) For obtaining health care items and services that are necessary for

the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

- (c) For short-term, noncash, in-kind emergency disaster relief;
- (d) For public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- (e) For programs, services or assistance, such as soup kitchens, crisis counseling and intervention and short-term shelter specified by federal law or regulation that:
 - (i) Deliver in-kind services at the community level, including services through public or private nonprofit agencies;
 - (ii) Do not condition the provision of assistance, the amount of assistance provided or the cost of assistance provided on the individual recipient's income or resources; and
 - (iii) Are necessary for the protection of life or public safety;
- (f) For prenatal care;
- (g) For postnatal care not to exceed twelve (12) months; or
- (h) For food assistance for a dependent child under eighteen (18) years of age.

Notwithstanding the provisions of this subsection (3), for the county indigent program, the limitations contained in section 31-3502(18)B., Idaho Code, shall apply.

(4) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen (18) years of age or older for federal public benefits or state or local public benefits by:

- (a) Employing electronic means to verify an applicant is legally present in the United States; or
- (b) Requiring the applicant to provide:
 - (i) An Idaho driver's license or an Idaho identification card issued pursuant to section 49-2444, Idaho Code;
 - (ii) A valid driver's license or similar document issued for the purpose of identification by another state or territory of the United States, if such license or document contains a photograph of the individual or such other personal identifying information relating to the individual that the director of the department of health and welfare or, with regard to unemployment compensation benefits, the director of the department of labor finds, by rule, sufficient for purposes of this section;
 - (iii) A United States military card or a military dependent's identification card;
 - (iv) A United States coast guard merchant mariner card;
 - (v) A native American tribal document;
 - (vi) A copy of an executive office of immigration review, immigration judge or board of immigration appeals decision, granting asylee status;
 - (vii) A copy of an executive office of immigration review, immigration judge or board of immigration appeals decision, indicating that the individual may lawfully remain in the United States;
 - (viii) Any United States citizenship and immigration service issued

document showing refugee or asylee status or that the individual may lawfully remain in the United States;

(ix) Any department of state or customs and border protection issued document showing the individual has been permitted entry into the United States on the basis of refugee or asylee status, or on any other basis that permits the individual to lawfully enter and remain in the United States; or

(x) A valid United States passport; and

(c) Requiring the applicant to provide a valid social security number that has been assigned to the applicant; and

(d) Requiring the applicant to attest, under penalty of perjury and on a form designated or established by the agency or the political subdivision, that:

(i) The applicant is a United States citizen or legal permanent resident; or

(ii) The applicant is otherwise lawfully present in the United States pursuant to federal law.

(5) Notwithstanding the requirements of subsection (4)(b) of this section, the agency or political subdivision may establish by appropriate legal procedure such rules or regulations to ensure that certain individuals lawfully present in the United States receive authorized benefits including, but not limited to, homeless state citizens.

(6) For an applicant who has attested pursuant to subsection (4)(d) of this section stating that the applicant is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, which may be referred to as the "SAVE" program, operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the attestation may be presumed to be proof of lawful presence for purposes of this section.

(a) Errors and significant delays by the SAVE program shall be reported to the United States department of homeland security to ensure that the application of the SAVE program is not wrongfully denying benefits to legal residents of this state.

(b) Agencies or political subdivisions may adopt variations of the requirements of subsection (4)(d) of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances in which the verification procedures in this section would impose unusual hardship on a legal resident of this state; except that the variations shall be no less stringent than the requirements of subsection (4)(d) of this section.

(c) A person who knowingly makes a false, fictitious or fraudulent statement or representation in an attestation executed pursuant to subsection (4)(d) or (6)(b) of this section or who knowingly provides a social security number that has not been assigned to him pursuant to subsection (4)(c) of this section shall be:

- (i) Guilty of a misdemeanor for the first and second offense; and
- (ii) Guilty of a felony for each subsequent offense.

(7) An agency or political subdivision may accept as prima facie evidence of an applicant's lawful presence in the United States the information required in subsection (4) of this section, as may be modified by subsection (5) of this section, when issuing a professional license or a commercial license.

History.

I.C., § 67-7903, as added by 2007, ch. 311, § 1, p. 877; am. 2008, ch. 27, § 19, p. 58; am.

2009, ch. 177, § 20, p. 558; am. 2009, ch. 197, § 1, p. 633; am. 2011, ch. 280, § 1, p. 760; am. 2011, ch. 291, § 28, p. 794.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 27, substituted "department of labor" for "department of commerce and labor" in paragraph (4)(b)(i).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 177, updated the section reference in subsection (3)(h) to reflect the 2009 amendment of § 31-3502.

The 2009 amendment, by ch. 197, added subsections (4)(b)(vi) through (4)(b)(ix) and redesignated former subsection (4)(b)(vi) as subsection (4)(b)(x).

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 280, in paragraph (6)(c), substituted "or who knowingly provides a social security number that has not been assigned to him pursuant to subsection (4)(c) of this section shall be" at the end of the

introductory paragraph and the contents of (1) and (2) for "shall be guilty of a misdemeanor."

The 2011 amendment, by ch. 291, updated the subsection reference in the last sentence in subsection (3) in light of the 2011 amendment of § 31-302.

Compiler's Notes.

Section 2 of S.L. 2007, ch. 311 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

S.L. 2009, chapter 197 became law without the signature of the governor, effective July 1, 2009.

CHAPTER 82

DEVELOPMENT IMPACT FEES

SECTION.

67-8203. Definitions.

SECTION.

67-8204A. Intergovernmental agreements.

67-8203. Definitions. — As used in this chapter:

(1) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service area or areas within the jurisdiction of the governmental entity.

(2) "Appropriate" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.

(3) "Capital improvements" means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.

(4) "Capital improvement element" means a component of a comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which

component meets the requirements of a capital improvements plan pursuant to this chapter.

(5) "Capital improvements plan" means a plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source.

(6) "Developer" means any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to sections 50-1301 through 50-1334, Idaho Code.

(7) "Development" means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities or the subdivision of property that would permit any change in the use, character or appearance of land. As used in this chapter, "development" shall not include activities that would otherwise be subject to payment of the development impact fee if such activities are undertaken by a taxing district, as defined in section 63-201, Idaho Code, in the course of carrying out the taxing district's public responsibilities, unless the adopted impact fee ordinance expressly includes taxing districts as being subject to development impact fees.

(8) "Development approval" means any written authorization from a governmental entity which authorizes the commencement of a development.

(9) "Development impact fee" means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. This term is also referred to as an impact fee in this chapter. The term does not include the following:

(a) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;

(b) Connection or hookup charges;

(c) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or

(d) Amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to section 67-8209(3), Idaho Code, for credit or reimbursement.

(10) "Development requirement" means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

(11) "Extraordinary costs" means those costs incurred as a result of an extraordinary impact.

(12) "Extraordinary impact" means an impact which is reasonably determined by the governmental entity to: (i) result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed

to be paid pursuant to a development agreement as allowed by section 67-8214(2), Idaho Code, or (ii) result in the need for system improvements which are not identified in the capital improvements plan.

(13) "Fee payer" means that person who pays or is required to pay a development impact fee.

(14) "Governmental entity" means any unit of local government that is empowered in this enabling legislation to adopt a development impact fee ordinance.

(15) "Impact fee." See development impact fee.

(16) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

(17) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(18) "Manufactured home" means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, et seq.

(19) "Modular building" is as defined in section 39-4301, Idaho Code.

(20) "Present value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

(21) "Project" means a particular development on an identified parcel of land.

(22) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

(23) "Proportionate share" means that portion of the cost of system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project.

(24) "Public facilities" means:

- (a) Water supply production, treatment, storage and distribution facilities;
- (b) Wastewater collection, treatment and disposal facilities;
- (c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;
- (d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(e) Parks, open space and recreation areas, and related capital improvements; and

(f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

(25) "Recreational vehicle" means a vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

(26) "Service area" means any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area defined, on the basis of sound planning or engineering principles or both.

(27) "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(28) "System improvements," in contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area including, without limitation, the type of improvements described in section 50-1703, Idaho Code.

(29) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in section 50-1702(h), Idaho Code, to provide additional public facilities needed to serve new growth and development. For clarification, system improvement costs do not include:

(a) Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;

(b) Repair, operation or maintenance of existing or new capital improvements;

(c) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(d) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

(e) Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvement plan, as provided in section 67-8208, Idaho Code; or

(f) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

History.

I.C., § 67-8203, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 1, p. 1226;

am. 2002, ch. 347, § 1, p. 982; am. 2007, ch. 252, § 16, p. 737; am. 2008, ch. 389, § 1, p. 1068.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 252, rewrote subsection (19), which formerly read: "Modular building" means any building or building component, other than a manufactured home, which is constructed according to standards contained in the Uniform Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or

substantially prefabricated or assembled at a place other than the building site."

The 2008 amendment, by ch. 389, added the last sentence in subsection (7).

Effective Dates.

Section 2 of S.L. 2008, ch. 389 declared an emergency. Approved April 9, 2008.

67-8204A. Intergovernmental agreements. — Governmental entities as defined in section 67-8203(14), Idaho Code, which are jointly affected by development are authorized to enter into intergovernmental agreements with each other or with highway districts, fire districts, water districts, sewer districts, recreational water and sewer districts or irrigation districts for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws. Governmental entities are also authorized to enter into agreements with the Idaho transportation department for the expenditure of development impact fees pursuant to a developer's agreement under section 67-8214, Idaho Code.

History.

I.C., § 67-8204A, as added by 1996, ch. 366, § 3, p. 1226; am. 2007, ch. 167, § 1, p. 496.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 167, inserted "fire districts, water districts, sewer districts,

recreational water and sewer districts or irrigation districts" in the first sentence.

CHAPTER 83

IDAHO FOOD QUALITY ASSURANCE INSTITUTE

SECTION.

67-8302. Commissioners — Chairman — Appointments.

67-8302. Commissioners — Chairman — Appointments. — The governor shall appoint ten (10) persons to be commissioners of the Idaho food quality assurance institute. The commissioners shall serve at the pleasure of the governor and shall include the following:

- (1) One (1) representative of a row crop industry;
- (2) One (1) representative of an orchard industry;
- (3) One (1) representative of a grain industry;
- (4) One (1) representative of a specialty crop industry;
- (5) One (1) representative of a livestock industry;
- (6) One (1) consumer;
- (7) One (1) representative of the Idaho department of agriculture;

(8) One (1) representative of the college of southern Idaho;

(9) One (1) scientist with practical experience in quality certification procedures and standards;

(10) One (1) representative of the private laboratory industry.

The governor shall appoint a chairman from among the nine (9) commissioners. The commissioners shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term. A commissioner shall hold office until a successor has been appointed and qualifies. A certificate of the appointment or reappointment of any commissioner shall be filed in the office of the secretary of state and in the office of the institute, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. The governor, the state treasurer, the state controller and the administrator of the division of financial management shall serve as advisors to the commissioners of the institute.

In addition, two (2) members of the Idaho senate, one (1) from the majority party and one (1) from the minority party, and two (2) members of the Idaho house of representatives, one (1) from the majority party and one (1) from the minority party, may be appointed by the legislative council to serve as advisors to the commissioners of the institute. Such appointments shall be for a term of two (2) years beginning on January 1 of each odd-numbered year, and no appointee shall serve more than two (2) terms. Actual and necessary expenses and per diem shall be allowed to the legislative advisors as provided for members of the legislative council, and shall be paid from legislative funds.

History.

I.C., § 67-8302, as added by 1996, ch. 358,

§ 1, p. 1204; am. 1997, ch. 302, § 3, p. 894; am. 2008, ch. 208, § 1, p. 661.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 208, in subsections (1) through (3), substituted "industry" for "commodity commission"; in subsection (4), substituted "crop industry" for "commodity commission"; in subsection (5), substituted "a livestock industry" for "an animal product commodity commission"; and

deleted the former fourth sentence in subsection (10), which read: "The terms of the first nine (9) commissioners shall end on July 1, 2000; the terms of four (4) of the commissioners next appointed shall end on July 1, 2002, and the terms of the remaining five (5) commissioners next appointed shall end on July 1, 2004."

CHAPTER 85

IDAHO HALL OF FAME ADVISORY BOARD

SECTION.

67-8501. Purpose. [Repealed.]

67-8502. Creation — Composition. [Repealed.]

67-8503. Duties and responsibilities. [Repealed.]

SECTION.

67-8504. Idaho hall of fame building advisory board fund. [Repealed.]

67-8501. Purpose. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8501, as added by 1997, ch. 395,
§ 1, p. 1256.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2012, ch. 255 provided:
“Legislative Intent. It is the intent of the
Legislature to repeal statutes involving inac-
tive programs that require appointment of
members of the Legislature. In addition to the
repealed sections in this act, it is legislative

intent that no legislative appointment be
made for the purposes of the Idaho Commem-
orative Silver Medallions as provided in Sec-
tion 67-1223, Idaho Code, until the State
Treasurer issues a new series of medallions at
which time such legislative appointments
would be appropriate.”

67-8502. Creation — Composition. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8502, as added by 1997, ch. 395,
§ 1, p. 1256.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2012, ch. 255 provided:
“Legislative Intent. It is the intent of the
Legislature to repeal statutes involving inac-
tive programs that require appointment of
members of the Legislature. In addition to the
repealed sections in this act, it is legislative

intent that no legislative appointment be
made for the purposes of the Idaho Commem-
orative Silver Medallions as provided in Sec-
tion 67-1223, Idaho Code, until the State
Treasurer issues a new series of medallions at
which time such legislative appointments
would be appropriate.”

67-8503. Duties and responsibilities. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8503, as added by 1997, ch. 395,
§ 1, p. 1256.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2012, ch. 255 provided:
“Legislative Intent. It is the intent of the
Legislature to repeal statutes involving inac-
tive programs that require appointment of
members of the Legislature. In addition to the
repealed sections in this act, it is legislative

intent that no legislative appointment be
made for the purposes of the Idaho Commem-
orative Silver Medallions as provided in Sec-
tion 67-1223, Idaho Code, until the State
Treasurer issues a new series of medallions at
which time such legislative appointments
would be appropriate.”

67-8504. Idaho hall of fame building advisory board fund. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8504, as added by 1997, ch. 395,
§ 1, p. 1256.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: "Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative

intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in Section 67-1223, Idaho Code, until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate."

CHAPTER 86

LEWIS AND CLARK TRAIL COMMITTEE

SECTION.

67-8601. Governor's Idaho Lewis and Clark trail committee fund.

67-8601. Governor's Idaho Lewis and Clark trail committee fund.

— There is hereby created the governor's Idaho Lewis and Clark trail committee fund in the state treasury. Moneys in the fund may consist of donations, ticket sale proceeds, contributions, appropriations, grants, gifts, bequests or other sources and shall be utilized in support of the efforts of the advisory board to preserve the Lewis and Clark trail.

History.

I.C., § 67-8601, as added by 1998, ch. 314, § 1, p. 1036; am. 2011, ch. 87, § 1, p. 183.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 87, deleted "and other needs related directly to oversee-

ing and coordinating the bicentennial commemoration of the Lewis and Clark corps of discovery" from the end of the section.

CHAPTER 87

IDAHO BOND BANK AUTHORITY

SECTION.

67-8703. Bond bank authority created — Membership — Vacancies — Officers — Quorum — Compensation.
67-8716. Unlimited sales tax receipts pledge.
67-8720. Expenses of administration.
67-8725. Payment transfer — Notice of non-payment — State financial assistance intercept mechanism

SECTION.

— State treasurer duties — Interest and penalty provisions.
67-8727. Alternative intercept procedure.
67-8728. Limited exemption from intercept provisions. [Repealed.]
67-8729. Idaho bond bank administrative fund.

67-8703. Bond bank authority created — Membership — Vacancies — Officers — Quorum — Compensation. — (1) There is hereby created an independent public body corporate and politic to be known as the Idaho bond bank authority. The authority is an instrumentality of the state within the state treasurer's office but has a legal existence independent of

and separate from the state with continuing succession until its existence is terminated by law.

(2) The authority shall consist of the following five (5) members:

(a) The state treasurer, or his designee, who shall serve as ex officio chairman;

(b) One (1) member of the senate, who shall be appointed by and serve at the pleasure of the president pro tempore of the senate for a term of two (2) years;

(c) One (1) member of the house of representatives, who shall be appointed by and serve at the pleasure of the speaker of the house of representatives for a term of two (2) years; and

(d) Two (2) members appointed by the governor, who shall serve at the pleasure of the governor for terms of four (4) years, and who shall be residents of the state and qualified voters at the time of appointment.

(3) A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(4) The members may elect, by majority vote, a secretary and a treasurer. The secretary and treasurer may be nonmembers, and the same person may be elected to serve both as secretary and treasurer.

(5) Three (3) members of the authority shall constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at any meeting by the affirmative vote of a majority of members present. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the powers and perform all the duties of the authority.

(6) Members of the authority shall be compensated as provided by section 59-509(h), Idaho Code, except for those members with salaries established in section 59-501, Idaho Code.

History.

I.C., § 67-8703, as added by 2001, ch. 130,
§ 1, p. 451; am. 2013, ch. 105, § 1, p. 248.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 105, added
“except for those members with salaries es-

tablished in section 59-501, Idaho Code” at
the end of subsection (6).

67-8716. Unlimited sales tax receipts pledge. — (1) The bond bank authority fund is hereby statutorily created in the state treasury. Moneys in the fund shall be used only as provided in this chapter. Earnings of the bond bank authority fund shall be deposited into the general fund as defined in section 67-1205, Idaho Code.

(2) If sufficient moneys are not available to pay debt service on the bonds of the authority, except for bonds the authority has specifically designated not to receive payment from the sales tax, as of five (5) days prior to the scheduled payment date of such bonds, the state treasurer shall give notice to the state controller, certifying the amount of the deficiency, at least five (5) days prior to the scheduled payment date. After receipt of the certified notice

from the state treasurer pursuant to this subsection (2), the state controller shall cause moneys representing state sales tax receipts in the amount of the deficiency certified by the state treasurer to be transferred from the general fund as defined in section 67-1205, Idaho Code, and deposited in the bond bank authority fund; provided however, that in no event shall a transfer of moneys representing state sales tax receipts from the general fund under the provisions of this chapter impede or otherwise affect the payment of sales tax moneys pledged for the payment on other state bonds outstanding on the effective date of this act or subsequently issued as tax anticipation notes pursuant to section 63-3202, Idaho Code.

(3) Moneys transferred from the general fund to the bond bank authority fund pursuant to subsection (2) of this section shall be deposited in the reserve fund as replacement moneys for amounts withdrawn from the reserve fund to pay debt service on the bonds pursuant to section 67-8725, Idaho Code, to the extent such moneys are derived from amounts appropriated to the reserve fund by the legislature, or shall be used to pay debt service when due on bonds for which other moneys available pursuant to section 67-8727, Idaho Code, are insufficient.

(4) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair or limit the rights vested by the sales tax account pledge provided in this section and in section 63-3638, Idaho Code, with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(5) To the extent that other legally available revenues and funds of the state are insufficient to meet the certified deficiency, the state tax commission shall transfer moneys from the sales tax account in section 63-3638, Idaho Code.

History.

I.C., § 67-8716, as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 4, p. 426; am.

2005, ch. 389, § 6, p. 1250; am. 2008, ch. 407, § 1, p. 1116; am. 2011, ch. 214, § 1, p. 600.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 407, deleted subsection (1), which read: "If moneys expected to be intercepted pursuant to section 67-8725, Idaho Code, are expected to be insufficient to reimburse the state for its payments in respect of the municipal bonds, except for bonds the authority has specifically designated, at the time of issuance, not to receive payment from the sales tax, the state treasurer shall certify to and give notice to the state tax commission of the amount of the deficiency," and redesignated former subsections (2) through (4) as present subsections (1) through (3); in the introductory paragraph in subsection (1), inserted "of the authority" in

the first sentence and, in the last sentence, deleted "section 67-8727, Idaho Code" following "pursuant to"; and made an internal reference update in subsection (2).

The 2011 amendment, by ch. 214, substituted "receipts" for "account" in the section heading; added subsection (1) and redesignated the subsequent subsections accordingly; rewrote present subsection (2) to the extent that a detailed comparison is impracticable; substituted "general fund" for "state sales tax account" and updated the internal reference in subsection (3); and in subsection (5), substituted "insufficient" for "sufficient," inserted "state tax commission shall," and deleted "is abated" from the end.

67-8720. Expenses of administration. — All expenses incurred in carrying out this chapter are payable either from revenues or funds

appropriated under this chapter or from moneys appropriated to the state treasurer from the general fund for operating expenditures. Nothing in this chapter authorizes the authority to incur an indebtedness or a liability on behalf of or payable by the state.

History.

I.C., § 67-8720, as added by 2001, ch. 130,
§ 1, p. 451; am. 2007, ch. 55, § 1, p. 138.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 55, in the first sentence, substituted “payable either” for

“payable solely,” and added “or from moneys appropriated to the state treasurer from the general fund for operating expenditures.”

67-8725. Payment transfer — Notice of nonpayment — State financial assistance intercept mechanism — State treasurer duties — Interest and penalty provisions. — (1)(a) Each municipality, with outstanding unpaid municipal bonds as set forth in this chapter held by or for the authority, shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds in order that the bonds of the authority may be paid. The paying agent may be the trustee for the bonds of the authority that are secured by those municipal bonds.

(b) A municipality subject to this section and chapter with regard to any municipal bonds and which is unable to transfer the scheduled debt service payment to the paying agent at least fifteen (15) days before the scheduled payment date shall immediately notify the paying agent and the state treasurer by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(c) If sufficient funds are not transferred to the paying agent as required by this subsection, the paying agent shall notify the authority and the state treasurer of that failure in writing at least ten (10) days before the scheduled debt service payment date by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(d) If sufficient moneys to pay the scheduled debt service payment have not been transferred to the paying agent at least ten (10) days before the scheduled payment date, the authority or the state treasurer shall cause sufficient moneys to be transferred from the reserve fund as provided in section 67-8713, Idaho Code, to the paying agent to make the scheduled debt service payment on the bonds of the authority.

(e) To the extent moneys transferred from the reserve fund are derived from moneys appropriated to the reserve fund by the legislature, the payment by the state treasurer transfers the rights represented by the obligation of the municipality and/or authority from the bondholders to the state.

(2)(a) If one (1) or more payments on bonds are made by the state treasurer from moneys in the reserve fund that are derived from moneys appropriated to the reserve fund by the legislature, due to the failure of the municipality to make payment on its bonds in a timely manner, the state treasurer, subject to the limitations provided in paragraph (b) of this subsection shall:

(i) Immediately intercept any payments from:

(A) The receipts of any payment of property taxes; or

(B) Sales tax moneys that would be distributed pursuant to section 63-3638, Idaho Code; or

(C) Liquor revenues that would be distributed pursuant to section 23-404, Idaho Code; or

(D) Any other source of operating moneys provided by the state to the municipality that issued the municipal bonds that would otherwise be paid to the municipality by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made by the state for the bonds of the authority by deposit to the reserve fund up to the amount withdrawn from the reserve fund for such purpose until all obligations of the municipality to the state arising from those payments, including interest and penalties, are paid in full.

(b) The foregoing intercept and transfer provisions shall operate by force of law and no consent thereto is required of the municipality in order to be enforceable, provided that such provisions shall not apply to any municipal bonds that were previously deemed exempt from intercept under section 67-8728, Idaho Code, when such section was in full force and effect.

(c) The state has no obligation to the municipality or to any person or entity to replace any moneys intercepted under the authority of this subsection. Any funds intercepted under subsection (2)(a)(i) of this section shall be used only for payment of bonds of the authority and not the bonds of the municipality, and the municipality shall receive no credit against amounts due under its municipal bonds for any amounts intercepted under subsection (2)(a)(i) of this section.

(3) The municipality that issued municipal bonds for which the state has made all or part of a debt service payment, either from amounts in the reserve fund that are derived from moneys appropriated by the legislature or from moneys transferred from the state sales tax account pursuant to section 67-8716, Idaho Code, shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys are drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus five percent (5%); and

(c) Pay all penalties required by this chapter.

(4)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the municipality on the state, market interest and penalty rates, and the cost of funds,

if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the municipality to make payment on its bonds in a timely manner, impose on the municipality a penalty of not more than five percent (5%) of the amount paid by the state for each instance in which a payment by the state is made.

(5)(a)(i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a municipality's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the municipality to compel it to:

(A) Levy and provide tax or other revenues to pay debt service on its municipal bonds when due; and

(B) Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a municipality.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The municipality shall pay the attorney's fees, expenses and costs of the state treasurer and the attorney general.

(6)(a) Except as provided in paragraph (c) of this subsection, any municipality whose operating funds were intercepted under this section may replace those funds from other municipal moneys or from property taxes, subject to the limitations provided in this subsection. Said operating funds may also be replaced by the authority from excess amounts available to it if the municipality subsequently pays the delinquent payments on its municipal bonds and any penalties or costs of expenses due the authority in connection therewith.

(b) A municipality may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the municipality;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the municipality; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a municipality may not replace operating funds intercepted by the state with moneys collected by the municipality and held to make payments on its municipal bonds if that replacement would divert moneys from the payment of future debt service on its municipal bonds and increase the risk that the state would be called upon an additional time to make payments on the bonds of the authority.

History.

I.C., § 67-8725, as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 5, p. 426; am.

2005, ch. 389, § 7, p. 1250; am. 2008, ch. 407, § 2, p. 1117.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 407, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Section 67-8728, referred to in paragraph (2)(b), was repealed by S.L. 2008, ch. 407, § 4, effective July 1, 2008.

67-8727. Alternative intercept procedure. — Notwithstanding any other provision of law to the contrary, to the extent that any bonds are not secured by moneys appropriated by the legislature to the reserve fund established pursuant to section 67-8713, Idaho Code, or such moneys are insufficient to pay debt service when due on the bonds, in lieu of the provisions set forth in section 67-8725, Idaho Code, the following provisions shall apply, provided that the provisions of section 67-8725, Idaho Code, shall continue to apply with respect to transfers of amounts in the reserve fund derived from moneys appropriated by the legislature:

(1)(a) Each municipality with outstanding unpaid municipal bonds as set forth in this chapter held by or for the authority, shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds. The paying agent may be the trustee for the bonds of the authority that are secured by those municipal bonds.

(b) A municipality which is unable to transfer the scheduled debt service payment to the paying agent at least fifteen (15) days before the scheduled payment date shall immediately notify the paying agent, the authority and the state treasurer by:

(i) Telephone;

(ii) A writing sent by facsimile transmission; and

(iii) A writing sent by first-class United States mail.

(c) If sufficient funds are not transferred to the paying agent as trustee for the bonds of the authority that are secured by those municipal bonds at least ten (10) days before the scheduled debt service payment date of those bonds, the trustee shall transfer any available funds pledged to secure payment of the bonds of the authority or the municipality held in any reserve fund or other pledged fund, or draw on any reserve surety policy securing such bonds, sufficient amounts to make up any shortfall in the amount necessary to pay debt service on the bonds on the scheduled payment date and deposit such amount in the debt service payment fund for those bonds.

(d) If the trustee is required to transfer funds pursuant to paragraph (c) of this subsection to pay debt service on the bonds of the authority or there are not sufficient funds available pursuant to paragraph (c) of this subsection to make up for any shortfall in the amount necessary to pay debt service on such bonds in order that the bonds of the authority may be timely paid, at least ten (10) days before the scheduled debt service payment date of the bonds, the trustee shall notify the authority and the state treasurer by:

- (i) Telephone;
 - (ii) A writing sent by facsimile transmission; and
 - (iii) A writing sent by first-class United States mail.
- (e) Upon the notice provided in subsection (1)(d) of this section, the state treasurer shall:
- (i) Immediately intercept any payments from:
 - (A) The receipts of any payment of property taxes; or
 - (B) Sales tax moneys that would be distributed pursuant to section 63-3638, Idaho Code; or
 - (C) Liquor tax moneys that would be distributed pursuant to section 23-404, Idaho Code; or
 - (D) Any other source of operating moneys provided by the state to the municipality that issued the municipal bonds that would otherwise be paid to the municipality by the state; and
 - (ii) Transfer the intercepted payments in the following order of priority:
 - (A) To the trustee for the bonds of the authority for deposit in the debt service payment fund for such bonds until there are sufficient amounts on deposit to pay debt service on the bonds of the authority on the scheduled payment date; provided that if the state treasurer will be unable to transfer sufficient intercepted payments for such purpose, the state treasurer shall give notice to the state tax commission, certifying the amount of the deficiency, at least five (5) days prior to the scheduled payment date of the bonds;
 - (B) To the trustee for the bonds to reimburse any amounts transferred from a reserve or other pledged fund or surety policy pursuant to paragraph (c) of this subsection up to the required balance in such fund or required reimbursement of such surety; and
 - (C) To the state for the reimbursement of any moneys transferred from the state sales tax account pursuant to section 67-8716, Idaho Code, to pay debt service on the bonds on the scheduled payment date, together with any interest or penalties established pursuant to section 67-8725, Idaho Code;
 - (iii) The foregoing intercept and transfer provisions shall operate by force of law and no consent thereto is required of the municipality in order to be enforceable, provided that such provisions shall not apply to any municipal bonds which were previously deemed exempt from intercept under section 67-8728, Idaho Code, when such section was in full force and effect.
- (f) The state has no obligation to the municipality or to any person or entity to replace any moneys intercepted under the authority of this subsection. Any funds intercepted under subsection (1)(e) of this section shall be used only for payment of bonds of the authority and not for the bonds of the municipality, and the municipality shall receive no credit against amounts due under its municipal bonds for any amounts intercepted under subsection (1)(e) of this section.
- (2)(a) The municipal bonds or the agreement for purchase of the municipal bonds by the authority may provide for payment of interest and penalties and other terms for reimbursement of any amounts drawn from

reserve funds, pledged funds, reserve surety policies or other credit enhancement to pay debt service on the bonds of the authority due to the failure of the municipality to make payment on its municipal bonds in a timely manner. To the extent that debt service on the bonds of the authority is paid from the state sales tax account pursuant to section 67-8716, Idaho Code, the provisions of sections 67-8725(3), (4) and (5), Idaho Code, shall apply.

(b) If the authority determines that amounts obtained under this section will not fully make up for failure of the municipality to pay its municipal bonds when due, together with any interest and penalties established pursuant to this section, within one (1) year from the payment of the municipality's scheduled debt service payment, the authority or the trustee for the bonds of the authority may pursue any legal action, including mandamus, against the municipality to compel the municipality to:

(i) Levy and provide tax or other revenues to pay debt service on its municipal bonds when due; and

(ii) Meet its repayment obligations, under its municipal bonds or otherwise, to the authority.

(c) In pursuing their rights under this subsection, the authority and the trustee shall also have the same substantive and procedural rights as a holder of the bonds of a municipality.

(d) The attorney general shall assist the authority in carrying out its duties under this subsection.

(e) The municipality shall pay the attorney's fees, expenses and costs of the authority, the trustee and the attorney general.

(3)(a) Except as provided in paragraph (c) of this subsection, any municipality whose operating funds were intercepted under this section may replace those funds from other municipal moneys or from property taxes, subject to the limitations provided in this subsection. Said operating funds may also be replaced by the authority from excess amounts available to it if the municipality subsequently pays the delinquent payments on its municipal bonds and any penalties or costs of expenses due the authority in connection therewith.

(b) A municipality may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the municipality;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the municipality; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of subsections (3)(a) and (b) of this section, a municipality may not replace operating funds intercepted by the state with moneys collected by the municipality and held to make payments on its municipal bonds if that replacement would divert moneys

from the payment of future debt service on its municipal bonds and increase the risk that the state would be called upon an additional time to make payments on the bonds of the authority.

History.

I.C., § 67-8727, as added by 2002, ch. 148,

§ 6, p. 426; am. 2005, ch. 389, § 8, p. 1250; am. 2008, ch. 407, § 3, p. 1120.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 407, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Section 67-8728, referred to in paragraph (1)(e)(iii), was repealed by S.L. 2008, ch. 407, § 4, effective July 1, 2008.

67-8728. Limited exemption from intercept provisions. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 67-

8728, as added by 2005, ch. 389, § 9, p. 1250, was repealed by S.L. 2008, ch. 407, § 4.

67-8729. Idaho bond bank administrative fund. — (1) There is hereby created in the state treasury the "Idaho Bond Bank Administrative Fund" to which shall be credited:

(a) Fees collected from municipalities or other potential sellers of municipal bonds in connection with application for and receipt of financing under this chapter, and interest and other charges on or in connection with municipal bonds purchased as it may deem necessary or appropriate to cover all costs and expenses of the authority and its operations;

(b) Fees and charges collected to cover costs associated with the powers and duties of the authority as required in section 67-8705, Idaho Code;

(c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and

(d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the treasurer of the state of Idaho, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to effect the purposes of chapter 87, title 67, Idaho Code, pursuant to the provisions as prescribed therein; provided however, the Idaho bond bank administrative fund is authorized to retain a portion of the moneys not to exceed one-half of one percent (0.5%) of the fund's annual revenues to defray costs associated with the implementation, administration and oversight of the Idaho bond bank authority.

History.

I.C., § 67-8729, as added by 2007, ch. 342, § 1, p. 1013.

CHAPTER 88

IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR

SECTION.

67-8803. When and by whom awarded.

67-8803. When and by whom awarded. — The Idaho law enforcement, firefighting and EMS medal of honor shall be awarded by the governor to the law enforcement recipients during the national law enforcement recognition week and to the firefighter and EMS recipients during the annual Idaho fallen firefighter memorial ceremony. The governor may delegate the awarding of the medal to the lieutenant governor or the attorney general.

History.

I.C., § 67-8803, as added by 2004, ch. 367,

§ 1, p. 1089; am. 2005, ch. 163, § 4, p. 498; am. 2012, ch. 213, § 1, p. 580.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 213, inserted “law enforcement” and added “and to the

firefighter and EMS recipients during the annual Idaho fallen firefighter memorial ceremony” in the first sentence.

CHAPTER 89

IDAHO ENERGY RESOURCES AUTHORITY ACT

SECTION.

67-8903. Definitions.

67-8907. Organizational meeting — Chairman — Secretary and treasurer — Executive director — Delegation of power — Surety bond and conflict of interest.

SECTION.

67-8910. Management and operation of facilities.

67-8921. Annual report.

67-8922. Authority obligations are legal investments.

67-8903. Definitions. — When used in this chapter, the following terms shall have the following meanings:

(1) “Authority” means the Idaho energy resources authority created pursuant to section 67-8904, Idaho Code.

(2) “Board” means the board of directors of the authority.

(3) “Bonds” means any bonds, notes, certificates or other obligations or evidences of indebtedness issued by the authority.

(4) “Commission” means the Idaho public utilities commission created pursuant to section 61-201, Idaho Code.

(5) “Electric cooperative” means a cooperative corporation or association which is:

(a) Organized under the provisions of section 501(c)(12) or 1381 of the Internal Revenue Code;

(b) Is an Idaho nonprofit corporation pursuant to chapter 3, title 30, Idaho Code; and

(c) Is an operating entity or successor entity thereof which owns facilities

and provides electric service to customers in Idaho as of the effective date of this chapter.

(6) "Facility" means any facility necessary, used or useful in connection with the generation, transmission or distribution of electric power and energy and any renewable energy generation project, in each case including, but not limited to, all real and personal property, fuel supplies and transportation facilities, pollution control facilities and all equipment and improvements necessary or desirable in connection with a facility. "Facility" shall include facilities owned in whole or in part by the authority or a participating utility, including undivided ownership interests in facilities, leasehold interests in facilities and other estates, but excludes a generating facility that sells any portion of its output as a qualifying facility to a participating utility under provisions of the public utility regulatory policies act of 1978, 16 U.S.C. section 2601 et seq.

(7) "Independent power producer" means any public or private corporation which is not itself a participating utility, but which may be an affiliate of a participating utility, that develops any renewable energy generation project undertaken by the authority pursuant to this chapter.

(8) "Participating utility" means, with respect to any facilities undertaken by the authority pursuant to this chapter, any public or private corporation, electric cooperative or other cooperative corporation or association, municipal corporation, political subdivision of this state or another state, state or federal agency, joint operating entity or other entity that:

(a) Owns and operates an electric utility system that provides electric services to consumers of electricity located in an existing service area within the boundaries of this state;

(b) Provides electric generation, power supply, transmission and/or ancillary and related services at wholesale to one (1) or more participating utilities described in paragraph (a) of this subsection; or

(c) Is organized or operates as a regional transmission organization covering all or any part of the state of Idaho and one (1) or more other states.

(9) "Renewable energy" means a source of energy that occurs naturally, is regenerated naturally or uses as a fuel source, a waste product or byproduct from a manufacturing process including, but not limited to, open or closed-loop biomass, fuel cells, geothermal energy, waste heat, cogeneration, solar energy, waterpower and wind.

(10) "Renewable energy generation project" means an electric generating facility or system that uses renewable energy as its primary source of energy to generate electricity.

(11) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from a participating utility.

History.

I.C., § 67-8903, as added by 2005, ch. 53, § 1, p. 192; am. 2005, ch. 311, § 2, p. 964; am. 2007, ch. 107, § 1, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, inserted "or distribution" in the first sentence in subsection (6).

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

67-8907. Organizational meeting — Chairman — Secretary and treasurer — Executive director — Delegation of power — Surety bond and conflict of interest. — (1) A director designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the board shall elect one (1) of the directors as chairman and one (1) as vice chairman.

(2) The board shall appoint a secretary and a treasurer and may appoint one (1) or more assistant secretaries and assistant treasurers, any of whom may be, but not required to be, a director of the authority, and who shall serve at the pleasure of the board. A single individual may be appointed as secretary-treasurer. They shall receive such compensation for their services as shall be fixed by the board. The secretary or an assistant secretary designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof and its official seal. The secretary or any assistant secretary shall cause necessary copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The treasurer shall have custody of and responsibility for the safekeeping of the funds and investments of the authority.

(3) The board may employ an executive officer and one (1) or more additional employees as it shall deem necessary and expedient to carry out its purposes. The executive officer may be, but is not required to be, a director of the authority. The executive officer shall serve at the pleasure of the board and shall receive such compensation as shall be fixed by the board.

(4) The board may delegate by resolution such powers and duties as it may deem proper to one (1) or more of its directors or to its secretary, executive officer or any assistant officers.

(5) The secretary, the treasurer and any executive officer shall execute a surety bond in the penal sum of five hundred thousand dollars (\$500,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each director, the secretary, the treasurer, the executive officer and any other employees or officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(6) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any electric

corporation, electric utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or any other firm, person or corporation to serve as a director of the authority, provided such trustee, director, officer, or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

History.

I.C., § 67-8907, as added by 2005, ch. 53,
§ 1, p. 192; am. 2012, ch. 150, § 1, p. 420.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 150, substituted "five hundred thousand dollars

(\$500,000)" for "one million (\$1,000,000)" near the beginning of subsection (5).

67-8910. Management and operation of facilities. — The authority shall cause any facilities undertaken by it to be managed and operated on its behalf by one (1) or more qualified participating utilities, or if no participating utility is qualified, willing or able to manage and operate such facility, by the authority or by an agent so designated by the authority capable and skilled in the management and operation of such a facility. The authority shall enter into joint operating arrangements with participating utilities, designated agents of the authority or others and may enter into any and all contractual arrangements determined by the authority to promote the effective and efficient management and operation of its facilities. The authority shall not commence the management or operation for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are determined by the authority to provide adequate assurance that all management, operating, maintenance and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

History.

I.C., § 67-8910, as added by 2005, ch. 53,
§ 1, p. 192; am. 2007, ch. 107, § 2, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, inserted "the authority or by" preceding "an agent" in the first sentence, and added the last sentence.

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

67-8921. Annual report. — The authority shall submit to the governor and to the legislature within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

- (1) Its operations and accomplishments;

(2) An accounting of its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes;

(3) Its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds;

(4) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year; and

(5) Any new or additional facility management and operation activities.

History.

I.C., § 67-8921, as added by 2005, ch. 53,
§ 1, p. 192; am. 2007, ch. 107, § 3, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, inserted
“and to the legislature” in the introductory
language; and added subsection (5).

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an
emergency. Approved March 20, 2007.

67-8922. Authority obligations are legal investments. — (1) The bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

(2) In addition to the investments permitted under chapter 12, title 67, Idaho Code, and notwithstanding any limitations on investments contained in that chapter, the state treasurer is authorized and empowered to invest state funds or any other funds in his hands in fixed or variable rate bonds of the authority and to enter into agreements with the authority in connection with any such investment, so long as the term of the investment does not exceed thirty (30) years and the quality of the underlying credit, or the underlying credit as enhanced, is not less than investment grade.

History.

I.C., § 67-8922, as added by 2005, ch. 53,
§ 1, p. 192; am. 2007, ch. 107, § 4, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, added the subsection (1) designation and subsection (2).

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

CHAPTER 90

IDAHO RURAL DEVELOPMENT PARTNERSHIP ACT

SECTION.

67-9001. Short title.

67-9002. Legislative findings.

67-9003. Definitions.

67-9004. Idaho rural development partnership created.

67-9005. Responsibilities.

SECTION.

67-9006. Board of directors.

67-9007. Cochairs.

67-9008. Executive director.

67-9009. General membership.

67-9010. Performance evaluations of state employees.

67-9001. Short title. — This act may be referred to and cited as the “Idaho Rural Development Partnership Act.”

History.

I.C., § 67-9001, as added by 2007, ch. 238, § 1, p. 703.

67-9002. Legislative findings. — The legislature finds that:

(1) Rural development has been given a high priority as a means of achieving a sound and mutually beneficial balance between the economies, culture, infrastructure and community vitality of rural and urban areas of Idaho.

(2)(a) During the last half century, the legislature has enacted many laws and established many programs to provide resources to rural communities;

(b) Efforts have been made, and continue to be needed, to coordinate rural development programs; and

(c) During the last decade, the national rural development partnership and its principal components, the national rural development council and state rural development councils, have successfully provided opportunities for collaboration and coordination among federal agencies and between federal agencies and states, nonprofit organizations, the private sector, tribal governments, and other entities committed to rural advancement.

(3) State rural development councils were established in 1990 by Presidential executive order as vehicles to help coordinate rural programs.

(4) The congress of the United States authorized and codified a national system of rural development coordination and cooperation with enactment of the “national rural development partnership act” (7 U.S.C. 2008m).

(5) The national rural development partnership has been recognized as a model of new governance and as an example of the effectiveness of collaboration between the federal, state, local, tribal, private, and nonprofit sectors in addressing the needs of the rural communities.

(6) Partnerships between governmental and nongovernmental entities can extend scarce funding through collaboration and cooperation.

(7) The continued success and efficacy of the Idaho rural development partnership could be enhanced through specific legislative authorization removing any statutory barriers that could detract from the benefits potentially achieved through the partnership's unique structure.

History.

I.C., § 67-9002, as added by 2007, ch. 238,
§ 1, p. 703.

67-9003. Definitions. — As used in this chapter:

(1) "Agency with rural responsibilities" means any public entity of the state of Idaho that:

(a) Implements a provision of law targeted at rural areas; or

(b) Administers a program that has a significant impact on rural areas.

(2) "National rural development partnership" means the organization created by the national rural development partnership act (7 U.S.C. 2008m).

(3) "Partnership" means the Idaho rural development partnership established by section 67-9004, Idaho Code.

(4) "Rural area" means:

(a) All the territory of the state of Idaho that is not within the boundary of any standard metropolitan statistical area as defined by the United States office of management and budget;

(b) All territory within any standard metropolitan statistical area described in subsection (4)(a) of this section within a census tract having a population density of less than twenty (20) persons per square mile, as determined according to the most recent census of the United States as of any date; and

(c) Such areas as the partnership may identify as rural.

History.

I.C., § 67-9003, as added by 2007, ch. 238,
§ 1, p. 703.

67-9004. Idaho rural development partnership created. — There is hereby created an independent public body corporate and politic to be known as the "Idaho rural development partnership," which shall be a public instrumentality of the state and its exercise of the powers conferred by this chapter is and shall be deemed to be the performance of essential public functions and purposes. The Idaho rural development partnership shall be exempt from taxation, and shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code, and shall be entitled to all the protection as provided in the tort claims act, chapter 9, title 6, Idaho Code.

History.

I.C., § 67-9004, as added by 2007, ch. 238,
§ 1, p. 703.

67-9005. Responsibilities. — The partnership's responsibilities shall be to:

- (1) Assess conditions of rural Idaho;
- (2) Advise the governor and the legislature on public policy and strategies to improve the quality of life in rural Idaho;
- (3) Act as a clearinghouse of information and as a referral center on rural programs and policies;
- (4) Conduct outreach to rural communities and facilitate communication between rural residents and public and private organizations that provide services to rural communities;
- (5) Identify organizations, authorities and resources to address various aspects of rural development;
- (6) Serve as a nonpartisan forum for identifying and understanding rural issues from all perspectives;
- (7) Improve intergovernmental coordination, private and public cooperation, and to seek out opportunities for new partnerships to achieve rural development goals within existing governmental and community structures;
- (8) Foster coordinated approaches to rural development that support local initiatives, with an imperative not to usurp the individual missions of any member organizations or duplicate effort;
- (9) Seek solutions to unnecessary impediments to rural development, first within Idaho and then through the national rural development partnership; and
- (10) Work cooperatively with the national rural development partnership and other state rural development councils.

History.

I.C., § 67-9005, as added by 2007, ch. 238,
§ 1, p. 703.

67-9006. Board of directors. — (1) The partnership shall be managed by a board of directors that shall include the following members:

- (a) A representative from the executive office of the governor;
- (b) The directors from not more than five (5) agencies with rural responsibilities, these being, unless otherwise seated by the balance of the board of directors, the Idaho departments of agriculture, commerce, environmental quality, labor, and transportation;
- (c) The director of the cooperative extension service in the state of Idaho;
- (d) Representatives from the following federal agencies: the United States department of agriculture's rural development, farm service agency and forest service, the United States department of the interior's bureau of land management, the United States department of commerce's economic development administration, the United States environmental protection agency, and the United States department of housing and urban development;
- (e) Four (4) state legislators consisting of one (1) member appointed by the president pro tempore of the senate, one (1) member appointed by the minority leader of the senate, one (1) member appointed by the speaker of

the house of representatives and one (1) member appointed by the minority leader of the house of representatives;

(f) A representative chosen by each of the federally recognized Indian tribes in the state of Idaho;

(g) Four (4) representatives from organizations of local government in the state of Idaho, one (1) each representing cities, counties, economic development agencies, and resource conservation and development organizations;

(h) Two (2) representatives from for-profit business organizations, to include agribusiness and other businesses operating with special emphasis on rural areas of the state of Idaho;

(i) A representative of the principal contractor for the United States department of energy's Idaho national laboratory; and

(j) Five (5) rural leaders chosen by the governor representing private entrepreneurs, chambers of commerce, nonprofit and community-based organizations, living in rural Idaho and representing a geographic balance across the state.

(2) Nonvoting, ad hoc members may be included on the board to assist with specific issues and projects as necessary.

(3) Except for appointments by the governor under subsection (1)(j) of this section, members of the board of directors shall serve at the pleasure of the organization or entity the member represents. Board members appointed under subsection (1)(j) of this section shall serve four (4) year terms concurrent with the governor's term, though lagging behind by three (3) months the governor's term.

(4) The duties of the board of directors shall be to:

(a) Elect a cochair as provided in section 67-9007, Idaho Code;

(b) To appoint and employ, and at its pleasure discharge, an executive director and to prescribe the duties and fix the compensation of the executive director; and

(c) To establish offices, to incur expenses, to enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter.

(5) The board of directors shall hold a meeting at least annually. A majority of the members of the board of directors shall constitute a quorum.

History.

I.C., § 67-9006, as added by 2007, ch. 238,
§ 1, p. 703.

67-9007. Cochairs. — (1) The board of directors of the partnership shall have two (2) cochairs, one (1) elected by the partnership's board of directors from among the board's membership, and the other appointed by the governor from among the state agency directors appointed pursuant to subsection (1)(b) of section 67-9006, Idaho Code. The cochair elected by the board of directors shall serve a two (2) year term, and may be reelected until a total of four (4) consecutive years have been served, following which that individual will be disqualified for election to the position of cochair until at least one (1) term of office has intervened.

(2) The duties of the cochairst shall be to:

(a) Set operating policies; and

(b) Manage the partnership budget and staff, including the hiring of an executive director.

History.

I.C., § 67-9007, as added by 2007, ch. 238,
§ 1, p. 703.

67-9008. Executive director. — The executive director of the partnership shall:

(1) Be an exempt, full-time position within a department of the executive branch of Idaho state government as designated by the governor;

(2) Manage the day-to-day operations of the partnership as directed by the board of directors and the cochairst;

(3) Be a person with the skills necessary to manage a diverse public organization effectively and with broad experience in building and sustaining networks and partnerships; and shall be hired through an open and competitive process when a vacancy occurs, after a broad, statewide advertising campaign without any preselection;

(4) Hire an assistant, and such temporary or part-time employees as may be necessary to achieve the partnership's purposes, provided approved by the cochairst of the board of directors and the availability of funding.

History.

I.C., § 67-9008, as added by 2007, ch. 238,
§ 1, p. 703.

67-9009. General membership. — The general membership of the partnership shall be open to any and all individuals or organizations desiring to assist with the partnership's purposes, including all local, tribal, state, and federal governments, as well as for-profit and not-for-profit private organizations having an interest in or some responsibility for rural development in the state of Idaho. No voting privileges on the partnership's board of directors are granted by virtue of general membership.

History.

I.C., § 67-9009, as added by 2007, ch. 238,
§ 1, p. 703.

67-9010. Performance evaluations of state employees. — In conducting the performance evaluation of an employee of an agency who has worked with the partnership, that agency may consider any comments submitted by the partnership in support of the employee.

History.

I.C., § 67-9010, as added by 2007, ch. 238,
§ 1, p. 703.

CHAPTER 91

IDAHO OUTDOOR SPORT SHOOTING RANGE ACT

SECTION.

67-9101. Definitions.

67-9102. State outdoor sport shooting ranges
— Operation and use — Noise
standards — Measurement.

SECTION.

67-9103. Nuisance action.

67-9104. Noise buffering or attenuation for
new use.

67-9105. Preemption of local authority.

67-9101. Definitions. — As used in this chapter:

(1) “Local government” means a county, city or town.

(2) “Person” means an individual, corporation, partnership, firm, association, joint venture, proprietorship, club or any other legal entity.

(3) “State outdoor sport shooting range” or “range” means an area owned by the state of Idaho or a state agency for the public use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, archery or any other similar sport shooting. “State outdoor sport shooting range” does not include:

(a) Any totally enclosed facility that is designed to offer a totally controlled shooting environment that includes impenetrable walls, floors and ceilings, adequate ventilation, lighting systems and acoustical treatment for sound attenuation; and

(b) Any law enforcement or military shooting range.

History.

I.C., § 67-9101, as added by 2008, ch. 116,
§ 1, p. 322.

JUDICIAL DECISIONS

Constitutionality.

Idaho Outdoor Sport Shooting Range Act, Chapter 91, Title 67, Idaho Code, is a constitutional general law, not a special law. The act and its noise standard apply equally to all non-law enforcement, non-military, state-owned shooting ranges. Additionally, the en-

actment of the act and its noise standard was not a legislative deprivation of judicial power; rather, it was a valid use of the legislature’s police power. *Hom v. Idaho Fish & Game Dep’t (Citizens Against Range Expansion)*, — Idaho —, 289 P.3d 32 (2012).

67-9102. State outdoor sport shooting ranges — Operation and use — Noise standards — Measurement. — (1) The state agencies responsible for managing state outdoor sport shooting ranges shall establish criteria for the operation and use for each range. The provisions of chapter 26, title 55, Idaho Code, shall not apply to state outdoor sport shooting ranges.

(2) The legislature finds that state outdoor sport shooting ranges should be subject to uniform noise standards as specified in this section.

(3) The noise emitted from a state outdoor sport shooting range shall not exceed an Leq(h) of sixty-four (64) dBA.

(4) Sound pressure measurements shall be made twenty (20) feet from the nearest existing occupied residence, school, hotel, motel, hospital or church and in a location directly between the range and the nearest existing occupied residence, school, hotel, motel, hospital or church. If there are natural or artificial obstructions that prevent an accurate noise measure-

ment, the measurement may be taken within an additional twenty (20) feet radius from the initial measurement location. If access to such location is not available, then sound pressure measurements shall be made at the range property line in a location directly between the range and the nearest existing occupied residence, school, hotel, motel, hospital or church.

(5) Sound pressure measurements shall be made on the A-weighted fast response mode scale. Measurements shall be taken during the noisiest hour of peak use during the operation of the range. Measurements shall be taken using a type 1 sound meter meeting the requirements of ANSI S1.4-1983.

(6) For the purposes of this section:

(a) “A-weighted” means a frequency weighting network used to account for changes in sensitivity as a function of frequency;

(b) “dBA” means A-weighted decibels, taking into account human response to sound energy in different frequency bands;

(c) “Decibel” means the unit of measure for sound pressure denoting the ratio between two quantities that are proportional to power. The number of decibels is ten (10) times the base ten logarithm of this ratio; and

(d) “Leq(h)” means the equivalent energy level that is the steady state level that contains the same amount of sound energy as a time varying sound level for a sixty (60) minute time period.

History.

I.C., § 67-9102, as added by 2008, ch. 116,
§ 1, p. 322.

JUDICIAL DECISIONS

Constitutionality.

Idaho Outdoor Sport Shooting Range Act, Chapter 91, Title 67, Idaho Code, is a constitutional general law, not a special law. The act and its noise standard apply equally to all non-law enforcement, non-military, state-owned shooting ranges. Additionally, the en-

actment of the act and its noise standard was not a legislative deprivation of judicial power; rather, it was a valid use of the legislature's police power. *Hom v. Idaho Fish & Game Dep't (Citizens Against Range Expansion)*, — Idaho —, 289 P.3d 32 (2012).

67-9103. Nuisance action. — Notwithstanding any other provision of law to the contrary, a person may not maintain a public or private nuisance action for noise against a state outdoor sport shooting range that is in compliance with this chapter.

History.

I.C., § 67-9103, as added by 2008, ch. 116,
§ 1, p. 323.

67-9104. Noise buffering or attenuation for new use. — Any new residential use or other new use within one (1) mile of an existing state outdoor sport shooting range shall provide for noise buffers or attenuation devices necessary to satisfy the noise standard prescribed by this chapter. New use as provided by this section shall not give rise to any right of a person to maintain a public or private nuisance action for noise against an existing state outdoor sport shooting range.

History.

I.C., § 67-9104, as added by 2008, ch. 116,
§ 1, p. 323.

JUDICIAL DECISIONS**Constitutionality.**

Idaho Outdoor Sport Shooting Range Act, Chapter 91, Title 67, Idaho Code, is a constitutional general law, not a special law. The act and its noise standard apply equally to all non-law enforcement, non-military, state-owned shooting ranges. Additionally, the en-

actment of the act and its noise standard was not a legislative deprivation of judicial power; rather, it was a valid use of the legislature's police power. *Hom v. Idaho Fish & Game Dep't* (Citizens Against Range Expansion), — Idaho —, 289 P.3d 32 (2012).

67-9105. Preemption of local authority. — Local governmental law is herein preempted and local governments shall not have authority to regulate the operation and use of state outdoor sport shooting ranges nor shall they have authority to establish noise standards for state outdoor sport shooting ranges.

History.

I.C., § 67-9105, as added by 2008, ch. 116,
§ 1, p. 323.

